

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: 11 December 2023

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**Public Redacted Version of Urgent Selimi Defence Request to the Trial Panel
for an Order to the Registrar Regarding Implementation of Decision F01977**

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I. INTRODUCTION

1. The Defence for Mr. Selimi ("the Defence") hereby requests an Order from the Trial Panel directed to the Registrar to ensure compliance with the Panel's Decision on the Prosecution Request to Modify Mr. Selimi's Detention Conditions ("Decision").¹
2. In exercising the discretion granted by the Trial Panel to implement the Decision, the Registrar notified Mr. Selimi² of various limitations relating to phone calls, video calls, non-privileged visits, and private visits which extend well beyond the full implementation of the Decision.
3. While the Defence entirely recognises the difficult obligation placed on the Registrar to exercise her discretion in implementing the Trial Panel's decision, these specific limitations on Mr. Selimi's visits and communications demonstrate that this discretion has been exercised arbitrarily. In light of the nature of the Registrar's letter and the upcoming judicial recess, urgent judicial intervention is therefore required to ensure the Decision is fairly and appropriately implemented.

II. SUBMISSIONS

a. Restrictions on telephone calls

4. In the Decision, the Trial Panel held, that "Video and telephone visits and communications shall require prior approval by the Registrar".³ Nevertheless,

¹ KSC-BC-2020-06, F01977, Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi, 1 December 2023 ("Decision").

² Letter from the Registrar to Mr. Selimi, Measures in place to Implement Decision F01977, 7 December 2023 ("Registrar Letter") attached as Annex 1 to KSC-BC-2020-06, F01989, Registry Update on Implementation Pursuant to Trial Panel II's Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions with confidential Annex 1 and confidential and *ex parte* Annexes 2, 3 and 4, 7 December 2023 ("Registry Update").

³ Decision, para. 62.

the Panel also held that "...[T]here 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 and DMU resources not warranted by the information presently before the Panel."⁴

5. Previously, before the Prosecution urgent request for modification of detention conditions⁵ was submitted, Mr. Selimi was able to communicate with his close family members, namely his wife and two children, by telephone from the DMU whenever he wished throughout the day. This allowed for regular communication between Mr. Selimi and his wife and children as well as permitted Mr. Selimi to retain a degree of autonomy in determining when and with whom he would choose to communicate on a given day.
6. However, further to the Registrar Letter, Mr. Selimi is now limited to one phone call per day during court days of 15 minutes, two calls of 15 minutes on non-court weekdays and one 20-minute phone call at the weekend, all of which have to be scheduled well in advance.⁶
7. In so deciding, the Registrar does not seek to explain why it is necessary to limit the phone calls to Mr. Selimi's close family members in this manner. These conversations are not being actively monitored and therefore no reason exists from the Panel's Decision which requires them to be made at a specific date or time to allow for Albanian speaking monitoring. There is simply no reason why Mr. Selimi should not be permitted to make phone calls from the phone in the

⁴ See KSC-BC-2020-06, F01943COR, Corrected Version of Registry's Submissions on the Prosecution's Urgent Request for Modification of Detention Conditions, 21 November 2023, paras 39(a), 43(a) ("Registry Submissions"); See also Decision, para 65.

⁵ KSC-BC-2020-06, F01933, Prosecution urgent request for modification of detention conditions with confidential Annexes 1 to 5, 17 November 2023 ("SPO Request")

⁶ Registrar Letter, p. 6.

DMU to specific numbers of his close family members authorised by the Registrar at times and dates of his own choice. This would fully comply with the Decision.

8. Mr. Selimi shares an incredibly strong connection with his children, having never missed a day of speaking to them throughout their lives before he was detained. Since his detention in November 2020, Mr. Selimi has continued to maintain an exceptionally close bond with them where he is actively engaged in their upbringing. Considering their young age, regularity, flexibility and spontaneity in their communications remain crucial.
9. In these circumstances, while the Defence understands and does not challenge the limitation of Mr. Selimi's other non-privileged phone calls to the specific dates and times set out in the Registrar's Letter, it is requested that this limitation not apply to phone calls to Mr. Selimi's wife and two children.

b. The duration of non-privileged visits

10. The Panel held that any alteration to detention conditions should be proportional.⁷ In establishing the conditions for non-privileged visits, the Panel accorded to the Registrar 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".⁸ While the Defence acknowledges the Registry's challenge in providing visits monitored by an Albanian speaker, the limitation notified by the Registrar to five non-privileged visits of 40 minutes each⁹ is unreasonable and does not allow for meaningful human contact.

⁷ Decision, para. 77.

⁸ Decision, para. 57.

⁹ Registrar Letter, p. 2.

11. Until the filing of the SPO Request, Mr. Selimi was permitted 10 non-privileged per month lasting up to 7 hours per day. The reduction imposed by the Registrar of 5 visits lasting a maximum of 40 minutes each is an extreme reduction of approximately 95% of what was previously authorised. Coupled with the restriction that only one person is permitted to visit Mr. Selimi at a time, this further reduces the amount of contact that Mr. Selimi may benefit from.
12. The KSC functions as a Kosovo Court. Yet Mr. Selimi is detained 2310 km away from Prishtina. To facilitate any visit, individuals in Kosovo must apply for visas, purchase airplane tickets for a connecting flight (as direct flights are unavailable), endure substantial expenses and expend significant time, just for a 40-minute meeting with Mr. Selimi. There is no indication that this has been considered at all by the Registrar.
13. While the Defence fully recognises the potential logistical burden imposed on the Registrar by the Decision, the Registrar's limitation on the duration of these visits to 40 minutes is therefore arbitrary. It effectively reduces the time available for such visits to such a short extent that the right to have non-privileged visitors has been denuded of all meaning.
14. In these circumstances, restricting non-privileged meetings to a duration of two hours, still a substantial reduction in the duration of visits previously allowed in light of the findings in the Decision, is a reasonable and proportionate reduction.

c. Private family visits

15. In the Decision, the Trial Panel stressed 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."¹⁰ It also held that:

¹⁰ Decision, para. 46.

“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 Accused and the fact that there is no indication of these visits having been used to engage in improper conduct thus far.”¹¹

16. However, the calendar established by the Registrar for Mr. Selimi has scheduled private visits with Mr. Selimi’s wife and children [REDACTED].¹² This constitutes a reduction of approximately 50% in relation to the duration of the visits previously authorised despite the fact that no monitoring of these visits is required under the Decision.
17. The current measures imposed by the Registrar, fail to adequately uphold Mr. Selimi's right to benefit from visits from his family. As these visits are not actively monitored, there appears to be little reason for additional staffing resources for these visits as they take place outside of the sight and hearing of the guards. There is no explanation by the Registrar as to why the reduction in their duration is necessary.
18. Mr. Selimi's family resides in Kosovo, which entails significant challenges for each visit. Due to Mr. Selimi’s incarceration, Mrs. Selimi [REDACTED] due to her position as an MP in the Kosovo Parliament [REDACTED]. Mr. Selimi’s children [REDACTED]. [REDACTED]. In these circumstances, there appears no justification for limiting these private visits to 3 hours per day.

d. The arrangement of visits

19. The Registrar’s Letter imposes a definitive and inflexible system of visits for Mr. Selimi over December and January. There is no reason to believe that a different system will be used for the duration that the restrictions imposed by the Decision

¹¹ Decision, para. 80.

¹² Annex 4 to Registry Update.

will be applied. No consultation with Mr. Selimi was undertaken before imposing the restrictions. This has led to a system which fails to implement the specific terms, or the rationale behind, the Panel's Decision.

20. First, the Registrar has established a system whereby every single visit and phone call has to be scheduled well in advance. This requirement, imposed by the Registrar with only three days' notice from the date of the notification of the letter on 7 December 2023, to when then the completed request had to be submitted by 10 December 2023, is unnecessarily restrictive.
21. Second, all possible in-person and video visits have been condensed within a ten-day period of the month. For example, three family visits are scheduled for [REDACTED] January followed immediately by a video call on [REDACTED] January with all other non-privileged visits planned for the following week. However, from [REDACTED] January onwards Mr. Selimi has no scheduled visits and minimal opportunity for interaction beyond those within the DMU premises and the Courtroom. The same principle applies to the schedule for December with the only difference being that due to the time taken to implement the Decision, no visits occurred, or will occur, before 18 December 2023. There is no reason to believe that this condensing of visits will change in future months.
22. The Defence recognises that the Registrar needs to schedule visits around the court schedule established by the Trial Panel. However, this does not mean that visits may not take place in the non-court days or weekends during court weeks as happened previously and spread such visits over the month.
23. Third, Mr. Selimi has only been allocated four non-privileged visits in December 2023¹³ rather than the five which has been set out under the Registrar Letter. While it is unclear if this is simply an administrative error or a choice by the

¹³ Annex 4 to Registry Update, p. 2.

Registrar, it does demonstrate that a more collaborative approach to organising visits would be more effective.

e. The urgency of the matter

24. In light of the impending winter recess commencing on 15 December 2023, it is vital that this issue be addressed and resolved urgently and that a system of visits and communications which faithfully implements the Panel's Decision, is established before that date.
25. In this regard, to expedite a resolution of this matter, the Defence seeks a brief status conference, for the Registrar to be able to respond to all relevant issues set out above at the end of witness testimony scheduled for the week commencing 11 December 2023.

III. CLASSIFICATION

26. This submission is filed confidentially pursuant to Rule 82(4) as it pertains to a confidential letter sent by the Registry. In line with the instructions of the Panel a public redacted version of the present filing will be filed as soon as possible after filing.

IV. CONCLUSION AND RELIEF REQUESTED

27. For the reasons set out herein, the Defence requests the Trial Panel to:
 - (i) **ORDER** the Registrar to amend the implementation of the Decision in such a way that it
 - a. Allows Mr. Selimi to call his wife and children from the DMU without further restriction;
 - b. Increases the duration of non-privileged in-person visits from 40 minutes to 2 hours per visit;

- c. Increases the duration of private visits from half a day to one full day; and
 - d. Permits Mr. Selimi some flexibility in scheduling all visits over the whole month and with less advance notice that ordered by the Registrar.
- (ii) **SCHEDULE** a status conference with the Registrar to resolve these issues.

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Respectfully submitted on 11 December 2023,



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