

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 Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

Date: 15 December 2023

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Public Redacted Version of ‘Thaçi Defence Joinder to ‘Urgent Selimi Defence Request to the Trial Panel for an Order to the Registrar Regarding Implementation of Decision F01977’ (F02002)’

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I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) joins the ‘Urgent Selimi Defence Request to the Trial Panel for an Order to the Registrar Regarding Implementation of Decision F01977’.¹ Specifically, the Defence joins the relief requested by the Defence for Mr Selimi (“Selimi Defence”), and requests the Trial Panel to:

- (i) **ORDER** the Registrar to amend the implementation of the Decision² in such a way that it:
 - (a) Allows Mr Thaçi to call his wife and son 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 Thaçi some flexibility in scheduling all visits over the course of a month, requiring a reasonable but reduced advance notice than ordered by the Registrar.

2. The Defence fully supports and endorses the majority of the submissions and requests made by the Selimi Defence. In particular, the Defence agrees that limitations relating to telephone calls, video calls, non-privileged visits, and private visits extend well beyond the full implementation of the Decision, and may amount to an arbitrary exercise of the Registrar’s discretion.³ The Defence only departs from the Selimi

¹ KSC-BC-2020-06/F02002, Specialist Counsel, *Urgent Selimi Defence Request to the Trial Panel for an Order to the Registrar Regarding Implementation of Decision F01977*, 11 December 2023, confidential (“Selimi Request”).

² KSC-BC-2020-06/F01977, Trial Panel II, *Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi*, 1 December 2023, public (“Decision”).

³ Selimi Request, paras. 2-3.

Defence in its request for a status conference.⁴ In light of the passing of the proposed deadline, and the Panel's request for written submissions, this now appears unnecessary.

3. In addition, the Defence also makes the following submissions specific to Mr Thaçi's circumstances, and the issues of restrictions on telephone calls and private family visits.

II. ADDITIONAL SUBMISSIONS

4. Requests for interim release have been consistently denied by both the Pre-Trial Judge and the Trial Panel. As such, regular in-person visits, and unrestricted telephone contact have become essential components of Mr Thaçi's ability to maintain his connection with his family. However, the restrictions recently imposed by the Registry regarding the number, duration, and scheduling of telephone calls and in-person private visits effectively deprive Mr Thaçi of the meaningful enjoyment of his right to family life.⁵ This deprivation is in contravention of the relevant human rights standards, as well as the finding by Her Honour Judge Luz del Carmen Ibáñez Carranza that "a detained person's right to family life is a fundamental human right which is well-established and articulated in international human rights law" and, as such, it "remains the Court's obligation to protect the right to family life" and ensure that such right is "not devoid of any meaningful content."⁶

⁴ Selimi Request, paras. 25, 27(ii).

⁵ See Letter from the Registrar to Mr Thaçi, Measures in place to Implement Decision F01977, 7 December 2023 attached as Annex 1 to KSC-BC-2020-06/F01989, Registrar, *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").

⁶ ICC, *Prosecutor v. Ntaganda*, [ICC-RoR220-02/21-6-Red](#), Presidency, Decision on the 'Request for judicial review of "Decision on Mr Ntaganda's Request for Review addressed to the Registrar received 14 April 2021", 11 May 2021 (ICC-RoR220-02/21-1-Conf-Exp), 15 July 2021, (ICCRoR220-02/21-6-Conf-Exp), 18 October 2022, Partly dissenting opinion of Judge Luz del Carmen Ibáñez Carranza, para. 4 (emphasis added).

5. As the Selimi Defence has described in relation to Mr Selimi,⁷ Mr Thaçi has also faced a substantial reduction in the number and duration of his telephone communications and in-person visits with his family, as well as significant rigidity in the scheduling of these. For example, the Defence shares the concerns articulated by the Selimi Defence regarding the scheduling for January 2024, as all of Mr Thaçi's family-oriented activity is condensed into [REDACTED]. Mr Thaçi has in-person private visits scheduled for [REDACTED] January 2024, as well as video calls scheduled on [REDACTED] January 2024. After [REDACTED] January, no further private visits or video calls have been scheduled, limiting any contact between Mr Thaçi and his family to the pre-scheduled 15 minute telephone call timeslots.⁸ This is a significant, and unjustified, limitation on his right to family life and prevents him from engaging with his wife and son in any meaningful way.

6. The Defence agrees that no substantive reasons have been provided to justify the limits on Mr Thaçi's phone calls to close family members in the manner set by the Registrar.⁹ As previously submitted by the Defence, there is no suggestion of wrongdoing on the part of Mr Thaçi's wife and son.¹⁰ That is, based on the available filings, and the disclosed audio-recordings, the SPO has not attempted to draw any link between Mr Thaçi's wife and son, and the allegations in question. The Trial Panel also confirmed 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", and confirmed there is no need for active monitoring of these calls.¹¹ It would therefore be fully compliant with the Decision for Mr Thaçi to be

⁷ Selimi Request, paras. 5, 6, 16, 21.

⁸ See schedule attached as Annex 2 to the Registry Update.

⁹ Selimi Request, para. 7.

¹⁰ KSC-BC-2020-06/F01944, Specialist Counsel, *Thaçi Defence Response to Prosecution urgent request for modification of detention conditions (F01933)*, 22 November 2023, confidential ("Thaçi Submissions"), para. 16.

¹¹ Decision, para. 65.

permitted to make phone calls to his close family members, including his wife and son, on dates and times of his own choice. Continued limitations on Mr Thaçi's telephone contacts with his close family would amount to a disproportionate interference with the right to family life, which is not justified by the furtherance of a legitimate aim.

7. Further, the limitations in the duration and scheduling of the private visits are not justified in light of the absence of restrictive measures imposed on such visits by the Panel,¹² and pose particular challenges for Mr Thaçi's wife and son. [REDACTED]. [REDACTED]. Such considerations necessitate greater flexibility with the scheduling, and visits of longer duration in order to ensure they are permitted meaningful time with Mr Thaçi when they can visit.

8. The Defence reiterates its previous submissions that "[r]estrictions imposed on the contact of the accused person must be justified and proportionate, in accordance with internationally recognised human rights."¹³ In effect, this is a balancing act, meaning that "contact restrictions must be necessary, proportionate to the legitimate aim pursued, and balanced against a suspect's right to private and family life".¹⁴ As noted above, the measures imposed by the Registrar, to limit telephone contact and private visits with Mr Thaçi's family, are without any demonstrated link with a legitimate aim of preventing interference. While the Defence appreciates the logistical difficulties faced by the Registrar, without any showing of a link between witness protection and the suspension of these visits, the limitations on contact between Mr Thaçi and his wife and son are punitive, arbitrary, and lack a legal basis.

¹² Decision, para. 80.

¹³ Thaçi Submissions, para. 19 and fn. 33, citing "*Al Hassan* January Decision, para. 10. See also *Al Hassan* June Decision, para. 15."

¹⁴ ICC, *Prosecutor v. Yekatom & Ngaissona*, [ICC-01/14-01/18-413-Red2](#), Pre-Trial Chamber II, Decision Pursuant to Regulation 101 of the Regulations of the Court, 16 February 2021, para. 78. See also *Prosecutor v. Al Hassan*, [ICC-01/12-01/18-2498-Red](#), Trial Chamber X, Decision Reviewing the Measures Restricting Mr. Al Hassan's Contacts while in Detention, 3 July 2023, paras. 20-21.

9. The Defence therefore respectfully joins the Selimi Request, and the relief requested therein, as modified by the submissions made above.

III. CLASSIFICATION

10. These submissions are filed confidentially pursuant to Rule 82, as they respond to filings with the same classification and contain confidential information. A public redacted version will be filed in due course.

[Word count: 1,400 words]

Respectfully submitted,



Gregory W. Kehoe

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Friday, 15 December 2023

At The Hague, The Netherlands