



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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:** 20 December 2023

**Language:** English

**Classification:** **Public**

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**Decision on Urgent Request for an Order to the Registrar Regarding  
Implementation of Decision F01977**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 3(5), 21, 34(12), 40 and 41 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 23(7) and 56(6) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), and Articles 8 and 9 of the Registry Practice Direction on Detention: Complaints,<sup>1</sup> hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 1 December 2023, the Panel rendered its further decision on the Specialist Prosecutor’s Office’s (“SPO”) request for modification of the detention conditions of Rexhep Selimi (“Mr Selimi”), Hashim Thaçi, and Kadri Veseli (“Decision”).<sup>2</sup>
2. On 7 December 2023, the Registrar filed an update on the implementation of the Panel’s Decision.<sup>3</sup> Annex 1 to the Registrar’s update contains a letter prepared by the Registrar notifying Defence Counsel for, *inter alia*, Mr Selimi, of the measures being put in place pursuant to the Panel’s Decision (“Registrar Letter”).<sup>4</sup>
3. On 11 December 2023, the Selimi Defence filed a request to the Panel to order the Registrar to amend its implementation of the Decision as outlined in the Registrar Letter (“Request”).<sup>5</sup>
4. On 14 December 2023, the Panel indicated that any responses to the Request shall be filed by 18 December 2023 and that no reply will be allowed.<sup>6</sup>

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<sup>1</sup> KSC-BD-11-Rev1, 23 September 2020.

<sup>2</sup> F01977, Trial Panel, *Further Decision on Prosecution Urgent Request for Modification of Detention Conditions*, 1 December 2023.

<sup>3</sup> F01989, Registrar, *Registry Update on Implementation Pursuant to Trial Panel II’s Further Decision on the Prosecution’s Urgent Request for Modification Conditions*, 7 December 2023, with Annex 1, confidential, and Annexes 2, 3 and 4, confidential.

<sup>4</sup> F01989/A01, Registrar, *Annex 1 to Registry Update on Implementation Pursuant to Trial Panel II’s Further Decision on the Prosecution’s Urgent Request for Modification Conditions*, 7 December 2023, confidential.

<sup>5</sup> 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. A public redacted version was filed on 14 December 2023, F02002/RED.

<sup>6</sup> Correspondence 398.

5. On 15 and 18 December 2023, the Defence for Hashim Thaçi (“Mr Thaçi” and “Thaçi Defence”) and the Defence for Kadri Veseli (“Mr Veseli” and “Veseli Defence”) joined the Request (“Thaçi Joinder”, “Veseli Joinder”, collectively “Joinders”).<sup>7</sup>

## II. SUBMISSIONS

6. The Selimi Defence submits that the Registrar has implemented the Panel’s Decision in an arbitrary manner, which extends beyond the discretion granted to the Registrar and beyond the provisions in the Panel’s Decision.<sup>8</sup> The Selimi Defence submits that the Registrar is impermissibly: (i) restricting privileged phone calls to Mr Selimi’s wife and children;<sup>9</sup> (ii) limiting the duration of non-privileged visits;<sup>10</sup> (iii) reducing the duration of private family visits;<sup>11</sup> and (iv) imposing an inflexible system for arranging visits.<sup>12</sup>

7. The Selimi Defence submits that an urgent judicial intervention is required to ensure that the Panel’s Decision is fairly and appropriately implemented.<sup>13</sup> The Selimi Defence requests that the Panel issue an order directing the Registrar to comply with the Panel’s Decision when implementing the modification of detention conditions found therein.<sup>14</sup> Specifically, the Selimi Defence requests that the Panel order the Registrar to amend the implementation of the Decision in such a way that: (i) allows Mr Selimi to call his wife and children from the Detention

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<sup>7</sup> F02017, Specialist Counsel, *Thaçi Defence Joinder to ‘Urgent Selimi Defence Request to the Trial Panel for an Order to the Registrar Regarding Implementation of Decision F01977’ (F02002)*, 15 December 2023, confidential (a public redacted version was filed on 20 December 2023, F02017/RED); F02021, Specialist Counsel, *Veseli Defence Joinder to ‘Urgent Selimi Defence Request to the Trial Panel for an Order to the Registrar Regarding Implementation of Decision F01977’ (F02002)*, 18 December 2023, confidential.

<sup>8</sup> Request, para. 1-3.

<sup>9</sup> Request, paras 4-9.

<sup>10</sup> Request, paras 10-14.

<sup>11</sup> Request, paras 15-18.

<sup>12</sup> Request, paras 19-23.

<sup>13</sup> Request, paras 3, 24.

<sup>14</sup> Request, para. 1.

Facility without further restriction; (ii) increases the duration of non-privileged in-person visits from 40 minutes to 2 hours per visit; (iii) increases the duration of private visits from half-a-day, to one-full-day; and (iv) allows Mr Selimi to schedule visits with greater flexibility and less advanced notice.<sup>15</sup> The Selimi Defence also requests that the Panel schedule a status conference with the Registrar to resolve the alleged issues.<sup>16</sup>

8. Both the Thaçi Defence and the Veseli Defence join the Request, except with regard to the request for a status conference.<sup>17</sup> The Thaçi and Veseli Defence request the Panel to order the Registrar to amend the implementation of the Decision in such a way that it: (i) allows Mr Thaçi and Mr Veseli to call their wife and children from the Detention Management Unit without further restriction; (ii) increases the duration of non-privileged in-person visits from 40 minutes to 2 hours per visit; (iii) increases the duration of private visits from half-a-day to one-full-day; and (iv) permits Mr Thaçi and Mr Veseli to schedule visits with greater flexibility and less advanced notice.<sup>18</sup>

9. The Thaçi Defence further submits that: (i) the imposed restrictions deprive Mr Thaçi of the meaningful enjoyment of his right to family life;<sup>19</sup> (ii) no substantive reasons have been provided to justify the limits set by the Registrar on Mr Thaçi's phone calls to close family members;<sup>20</sup> (iii) allowing Mr Thaçi to make phone calls to his close family members on dates and times of his own choosing would be compliant with the Decision;<sup>21</sup> (iv) the duration and scheduling of Mr Thaçi's private visits necessitate greater flexibility;<sup>22</sup> and (v) the measures imposed by the Registrar limiting telephone contacts and private visits with

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<sup>15</sup> Request, para. 27(i).

<sup>16</sup> Request, para. 27(ii).

<sup>17</sup> Thaçi Joinder, para. 2; Veseli Joinder, paras 1-3.

<sup>18</sup> Thaçi Joinder, para. 1; Veseli Joinder, paras 1-2.

<sup>19</sup> Thaçi Joinder, paras 4-5.

<sup>20</sup> Thaçi Joinder, para. 6.

<sup>21</sup> Thaçi Joinder, para. 6.

<sup>22</sup> Thaçi Joinder, para. 7.

Mr Thaçi's family are without demonstrated link with a legitimate aim of preventing interference.<sup>23</sup>

10. The Veseli Defence further requests: (i) clarification that Mr Veseli's minor children, who still live at home, be permitted to join telephone calls alongside Mr Veseli's wife;<sup>24</sup> and (ii) that greater care be taken to ensure that the schooling of Mr Veseli's children is not affected by the scheduling of in-person family visits.<sup>25</sup>

### III. APPLICABLE LAW

11. 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.

12. 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.

13. Pursuant to Article 8(2) of the Registry Practice Direction on Detainees: Complaints ("Practice Direction on Complaints"):<sup>26</sup>

Where the Registrar issues an initial written decision concerning a Detainee's treatment and/or the conditions of detention, in particular where the Registrar issues a decision to [ . . . ] restrict visits and communications [ . . . ], a Detainee may complain against the Registrar's decision by submitting a direct Complaint to the Registrar requesting reconsideration within thirty (30) calendar days of receipt of the Registrar's written decision.

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<sup>23</sup> Thaçi Joinder, para. 8.

<sup>24</sup> Veseli Joinder, para. 5.

<sup>25</sup> Veseli Joinder, para. 6.

<sup>26</sup> KSC-BC-11/Rev1, 23 September 2020.

14. Pursuant to Article 9 of the Practice Direction on Complaints, a detainee shall have the right to request judicial review of the Registrar's decision by submitting a Request for Judicial Review within thirty (30) calendar days of receipt of the Registrar's written decision.

15. In its Decision, the Panel provided for a right of judicial review of the Registrar's decision to refuse a request for an in-person or video visit, telephone communication, or to implement active monitoring of a video visit. Such a complaint may be made directly to the Panel within seven days.<sup>27</sup> The Panel also imposed specific time limits concerning certain reporting obligations of the Registrar.<sup>28</sup>

#### IV. DISCUSSION

16. At the outset, the Panel notes that the Veseli Joinder was filed two hours after the expiration of the deadline set by the Panel.<sup>29</sup> Pursuant to Rule 9(5)(b), in light of the importance of the issues raised and the absence of prejudice to other parties, the Panel recognises the Veseli Joinder as validly filed.

17. The Panel observes that, subject to the shortened deadlines set in the Panel's Decision, the Practice Direction on Complaints governs the procedure for submitting a complaint related to any decision made by the Registrar concerning conditions of detention. Under the Practice Direction on Complaints, and as ordered in the Panel's Decision, such a complaint should be submitted directly to the Registrar. Unless otherwise specified in the Panel's Decision, the detainee has 30 calendar days to submit such a complaint after the receipt of the Registrar's

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<sup>27</sup> Decision, paras 53, 69.

<sup>28</sup> Decision, paras 55, 58, 78.

<sup>29</sup> See Correspondence 398; Veseli Joinder.

written decision.<sup>30</sup> Once seized of such a complaint, the Registrar will acknowledge receipt of the complaint and issue reasons either reconsidering or declining to reconsider the Registrar's initial decision. The Panel further observes that, unless otherwise ordered in the Panel's Decision, a detainee has the right to request judicial review within 30 days of the Registrar's decision on reconsideration.<sup>31</sup>

18. Here, the Selimi, Thaçi and Veseli Defence seek the modification of the terms of the Registrar Letter by way of an order of the Panel. The Panel considers that such a request constitutes a "complaint", governed by the Practice Direction on Complaints, which creates a procedure whereby a complaint concerning restrictions on visits and/or communications imposed by the Registrar should go first to the Registrar and then to the Panel.<sup>32</sup> Thus, the procedure taken by the Defence is inconsistent with the procedure set out in the Practice Direction on Complaints.<sup>33</sup> It is also premature.

19. The Panel notes, furthermore, that it has endowed the Registrar with broad discretion to regulate and implement the Panel's Decision in a manner consistent with the terms of that Decision, the rights of the Accused, and practical considerations relevant to the effective implementation of the Decision. Any complaint against the implementation of the Panel's Decision would, therefore, have to establish that the Registrar went beyond the discretion granted to her by the Panel to implement its Decision and/or exercised that discretion in an arbitrary manner. The Panel notes that the fact that conditions set for visits or external contacts have been made more demanding for the Accused, or that such visits or

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<sup>30</sup> Practice Direction on Complaints, Art 8(2).

<sup>31</sup> Practice Direction on Complaints, Art 9(1).

<sup>32</sup> The Selimi Defence has not indicated in its Request that it first seized the Registrar seeking reconsideration before seizing the Panel, nor did the Thaçi and Veseli Defence in their Joinders.


<sup>33</sup> The Panel notes that the Decision also sets out a procedure whereby the detainee concerned may seek the direct judicial review of the Panel in respect of certain limited decisions of the Registrar (*see* Decision, paras 53, 69). The conditions set in the Registrar's Letter do not constitute such a decision.

contacts will become less frequent or shorter is not, on its own, an indication of arbitrariness on the part of the Registrar. These are the consequences of the Panel's Decision and of the circumstances that led to the adoption of that Decision.

20. For the foregoing reasons, the Panel finds that the Request, and the Joinders, are not validly before the Panel and are premature.

#### V. DISPOSITION

21. For the above-mentioned reasons, the Panel hereby **DENIES** the Request and Joinders.



**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Wednesday, 20 December 2023  
At The Hague, the Netherlands.