

**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:** 7 February 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Thaçi Defence Response to Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977'**

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## I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) hereby responds to the Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977.<sup>1</sup> The Registrar seeks further guidance from the Panel with respect to the conduct of Private Visits,<sup>2</sup> on the grounds that confidential information received in the context of the proceedings or elicited during testimony of witnesses who are subject to court-ordered protective measures may have been disclosed during in-person visits in the Detention Facilities, including during visits with the spouse and/or children of Mr Thaçi and Mr Selimi.

2. The Defence submits that any such disclosure by Mr Thaçi was inadvertent, insufficient to lead to the identification of witnesses, and does not warrant the amendment of the detention regime currently applied to Mr Thaçi.

## II. PROCEDURAL BACKGROUND

3. On 17 November 2023, the SPO submitted its Prosecution urgent request for modification of detention conditions.<sup>3</sup> The SPO alleged that Mr Thaçi, Mr Selimi and Mr Veseli violated the Trial Panel’s orders by revealing the identities of protected witnesses and/or disseminating the content of confidential testimony to persons visiting them at the Detention Centre, and asked the Trial Panel to segregate the Three Accused, restrict their non-privileged communications and order the active monitoring of all their non-privileged communications.<sup>4</sup> In support of its Request, the SPO relied on a selection of transcripts of such visits annexed to its filing.<sup>5</sup> The SPO

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<sup>1</sup> KSC-BC-2020-06/F02082, 26 January 2024, Confidential (“Notification”).

<sup>2</sup> In-person visits that are conducted with the Accused’s spouse and/or children. See Notification, para. 3.

<sup>3</sup> KSC-BC-2020-06/F01933 (“SPO Request”).

<sup>4</sup> SPO Request, paras 1-2.

<sup>5</sup> KSC-BC-2020-06/F01933/A04.

further annexed a list of visit audio-recordings in its custody, including the audio-recordings of two visits of Mr Thaçi by [REDACTED] on [REDACTED] 2023 (ERN 113418) and 22 September 2023 (ERN 115629), for which it didn't provide any transcript.<sup>6</sup>

4. On the same day, the Trial Panel issued its Decision on Prosecution Urgent Request for Modification of detention Conditions.<sup>7</sup> It granted the SPO Request in part and ordered the Registrar to temporarily restrict the three Accused's contacts, pending the Panel's final determination on the merits of the Request.<sup>8</sup>

5. Following submissions from the parties, the Trial Panel issued a Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi.<sup>9</sup> The Panel ordered certain restrictions on the Three Accused's visitations and telephone communication. It declined, however, to segregate the Three Accused, or to adopt any restrictive measures in respect of Private Visits, in light 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". The Panel noted that "it will not hesitate to impose additional restrictions upon private visits should any party engage in improper conduct during such visits."<sup>10</sup>

### III. DISCUSSION

6. The Registry Notification, with regard to Mr Thaçi, concerns only one occurrence of alleged disclosure of confidential information. The Registry submits that

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<sup>6</sup> KSC-BC-2020-06/F01933/A05, List of visit audio-recordings.

<sup>7</sup> KSC-BC-2020-06/F01936.

<sup>8</sup> *Ibid.*, para. 11.

<sup>9</sup> KSC-BC-2020-06/F01977 ("Further Decision").

<sup>10</sup> *Ibid.*, para. 80.

Mr Thaçi, during a non-privileged visit with [REDACTED] on 22 September 2023, may have disclosed confidential information received in the context of the proceedings or elicited during the testimony of W04421, who is subject to protective measures, such as the references to [REDACTED], [REDACTED].<sup>11</sup>

7. During the visit, Mr Thaçi did not refer to W04421 by name. It is also apparent from the exchanges that Mr Thaçi did not intend to reveal the witness' identity. Indeed, the information provided by Mr Thaçi is insufficient to identify W04421. As noted by Mr Thaçi and [REDACTED] during the conversation, [REDACTED].<sup>12</sup> In addition, it is also clear from the transcript that Mr Thaçi did not attempt to interfere with W04421's testimony, let alone express any kind of threat. Rather, the recording reveals what is essentially a normal conversation between family members about how the trial is progressing. As is understandable, it may sometimes be difficult for an Accused to draw a clear line between what information is identifying or not, or to recall what information was presented in closed or open session. In this situation, where Mr Thaçi evidently did not have the intent to identify W04421 to [REDACTED], the inadvertent disclosure of information does not warrant, at this stage, the modification of the regime of Private Visits.

8. Importantly, the SPO was already in possession of the audio-recording of this visit of 22 September 2023 at the time of filing its initial SPO Request, and declined to rely on it. As such, the recording in question does not constitute new information. The recent review of this material by the Registry, after the issuance of the Further Decision, does not warrant a change of the regime applied to Mr Thaçi's Private Visits. The Defence submits that the Panel can only reconsider its earlier decision if the provisions of Rule 79 have been met, *i.e.* only in "exceptional circumstances and where a clear error of reasoning has been demonstrated or where reconsideration is

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<sup>11</sup> Notification, para. 16.

<sup>12</sup> KSC-BC-2020-06/F02082/A10, p. 6, l. 10-15.

necessary to avoid injustice”, and that those conditions have not been met in the instance case. Nothing in Mr Thaçi’s conversation with [REDACTED] rises to the level of an “exceptional circumstance” that would lead to an injustice if the Further Decision is not amended or overturned.

9. Nevertheless, moving forward, Counsel will again remind and caution Mr Thaçi to ensure that this kind of inadvertent disclosure is prevented.

**IV. CLASSIFICATION**

10. These submissions are filed as confidential, as they respond to a confidential filing.

**V. CONCLUSION**

11. For the foregoing reasons, the Defence respectfully requests the Trial Panel to:

- **MAINTAIN** the current regime applied to Mr Thaçi’s Private Visits.

[Word count: 1005 words]

Respectfully submitted,



**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Wednesday, 7 February 2024

At Tampa, United States