

**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 Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Counsel for Rexhep Selimi

**Date:** 7 February 2024

**Language:** English

**Classification:** Public

---

**Public Redacted Version of Selimi Defence Response to “Registry’s  
Notification in Relation to Court-Ordered Protective Measures and Request for  
Guidance Pursuant to Decision F01977 with confidential Annexes 1-10”, F02082,  
dated 26 January 2024**

---

**Specialist Prosecutor’s Office**

Kimberly P. West

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Victims**

Simon Laws

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. On 26 January 2024, the Registrar submitted a Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977<sup>1</sup> seeking further guidance from the Trial Panel with respect to the conduct of private visits<sup>2</sup> and informing the Trial Panel that according to its assessment, in particular the Witness Protection and Support Unit's ('WPSO') assessment, 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.<sup>3</sup>
2. On 29 January 2024, based on the Notification, the Registrar issued a Decision on Specific Restrictions pursuant to Decision F01977.<sup>4</sup> The Registrar notified Mr. Selimi of her decision to (i) actively monitor the telephone calls Mr. Selimi has requested with [REDACTED], [REDACTED], (ii) actively monitor video visits Mr. Selimi has requested with [REDACTED], (iii) deny Mr. Selimi's request for a telephone call with [REDACTED] and to (iv) defer her decision on Mr. Selimi's request for Private Visits with [REDACTED], pending the Panel's guidance on the conduct of Private Visits.
3. In the Notification, the Registrar, and WPSO in particular, erred in their assessment of what may constitute a breach of confidentiality of the proceedings and of the court-ordered protective measures. Further, the Registrar erred in attributing conduct incompatible with the integrity of the proceedings or the

---

<sup>1</sup> KSC-BC-2020-06/F02082, Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977 with confidential Annexes 1-10, 26 January 2024, ("Notification").

<sup>2</sup> Notification, para. 19.

<sup>3</sup> Notification, paras 4 and 5.

<sup>4</sup> KSC/REG/IOR/6722, Decision of the Registrar on Specific Restrictions pursuant to Decision F01977, 29 January 2024 ("Decision on Specific Restrictions").

protection of the confidential information to the Parties in question, in particular to [REDACTED]. The Registrar also erred in her interpretation of the Trial Panel's instructions provided in its "Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi", dated 1 December 2023,<sup>5</sup> with respect to private visits.

## II. SUBMISSIONS

### A. Registrar, and WPSO in particular, erred in their assessment of the discrete audio recordings of non-privileged visits of Mr. Selimi

4. The Registrar submits that in the "pertinent parts of the identified transcripts, it is assessed 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" including during the visits with [REDACTED] of Mr. Selimi.<sup>6</sup>
5. In her submissions, the Registrar initially refers to a non-privileged in-person visit which took place between Mr. Selimi and [REDACTED] on 15 July 2023.<sup>7</sup>
6. According to the Registrar and to WPSO's assessment "confidential information received in the context of the proceedings or elicited during the testimony of W04337, who is subject to protective measures, may have been disclosed during the visit".<sup>8</sup> Such assessment is based on the "combination of specific references to [REDACTED] during the visit".<sup>9</sup>

---

<sup>5</sup> 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').

<sup>6</sup> Notification, para. 5 [emphasis added].

<sup>7</sup> Notification, paras 7-8.

<sup>8</sup> Notification, para. 8.

<sup>9</sup> Notification, para. 8.

7. The Trial Panel in its Decision provided that the Parties and Participants are under the general obligation not to disclose to third parties any confidential documents or information linked to the proceedings<sup>10</sup> with further explanation that “in particular, a Party or Participant shall not disclose the identity of a protected witness to any third party”.<sup>11</sup>
8. The Trial Panel also set out in its Decision that “the Accused are prohibited from disclosing or discussing with anyone other than their counsel and Defence team members information subject to protective measures [...]. This includes information which, directly or indirectly, could identify witnesses subject to protective measures.”<sup>12</sup>
9. Based on the transcript of the visit of Mr. Selimi dated 15 July 2023 it is impossible to positively conclude that mentioned information directly or indirectly could identify the witness subject to protective measures, in particular W04337 in this case.
10. In this regard, a combination of references to [REDACTED] in the meeting of 15 July 2023, cannot amount to identifying information. Such information without any further specifying details would not assist with either direct or indirect identification of a protected witness. The referenced information, even when combined, would not provide any clarity in respect of the identity of the witness.
11. Moreover, pursuant to the Trial Panel’s oral order on the publicity of proceeding, the Parties to the proceedings have been engaged in the review of the transcripts of the private sessions of hearings.<sup>13</sup> The Defence has not yet received a proposed

---

<sup>10</sup> Decision, para. 24 including fn. 59 referring to the F00854, Pre-Trial Judge, Decision on Framework for Handling Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or of a Participant, 24 June 2022, para. 212(I)(a).

<sup>11</sup> Decision, para. 24.

<sup>12</sup> Decision, para. 36 [emphasis added].

<sup>13</sup> KSC-BC-2020-06, Trial Panel II, Oral Order on the Publicity of the Proceedings, Transcript of 7 November 2023, T.9444-T.9446, (“Order on the Publicity of the Proceedings”).

lesser redacted version of a transcript of W04337's testimony from the SPO, but at this stage it does not consider that redactions should be applied to any of the cited information.

**B. The Registrar erred in attributing conduct incompatible with the integrity of the proceedings to [REDACTED].**

12. The Trial Panel explicitly directed the Registrar to refuse in-person visits only “where, in the exercise of her discretion, she determines that there are credible indications that the individual concerned has engaged or could engage in conduct incompatible with the integrity of proceedings and/or the regulations of detention.”<sup>14</sup>
13. The transcript of the audio recording that the Registrar is referring to with respect to this meeting does not provide enough information for the Registrar to justify her request for further guidance with regards to Private Visits and thus to defer her decision on Mr. Selimi's request for a private visit with [REDACTED].<sup>15</sup> Individual speakers at the meeting are not identified. Throughout the transcript all the speakers are named as “Unidentified Male 1, 2, 3, 4 or 5”. The transcript suggests that there were five people participating in the meeting even though only four have been identified as participants of the visit thus far. It is not therefore clear from the transcript who volunteered information qualified by the Registrar as potentially identifying and who was present in the room at the time when such information was discussed.
14. Therefore, in addition to the fact that the above information should not be considered as identifying, it is not established whether [REDACTED] was at all present in the room during such information being mentioned and thus whether

---

<sup>14</sup> Decision, para. 52.

<sup>15</sup> Annex 2 to the Notification.

he has engaged or could engage in conduct incompatible with the integrity of proceeding and/or regulations of detention.

**C. The Registrar erred in her interpretation of the Trial Panel's instructions with respect to the private visits of the Accused**

15. As it was rightfully noted by the Registrar, the Trial Panel declined to adopt any restrictive measures in respect of private visits of Mr. Selimi and noted that "there is no indication of these visits having been used to engage in improper conduct so far".<sup>16</sup>
16. In light of Article 8 of the ECHR, the Trial Panel also emphasised the importance of the private visits to the Accused.<sup>17</sup> [REDACTED] it is important to keep the continuity of Mr. Selimi's communication with [REDACTED].
17. Moreover, the Trial Panel stated that "it will not hesitate to impose additional restrictions upon private visits should any party engage in improper conduct during such visits".<sup>18</sup> The Registrar in her Notification refers to a different type of visit, namely a non-privileged visit, which occurred prior to the Trial Panel's Decision. Thus, according to the Trial Panel's finding, such submissions are irrelevant to the issue of the private visits of Mr. Selimi.
18. The visit of 15 July 2023 is the only visit among those referenced by the Registrar during which [REDACTED] could have been potentially exposed to alleged disclosure of information elicited during the testimony of a witness, who is subject to protective measures. This visit had occurred over four months before the Trial Panel issued its Decision. Moreover, since the conditions ordered by the Trial Panel in the Decision were implemented, there have been no reports or

---

<sup>16</sup> Notification, para. 37, *see also* Decision, para. 79.

<sup>17</sup> Decision, para. 80.

<sup>18</sup> Decision, para. 80 [emphasis added].

notifications from the Registry on any incidents of the breach of such conditions by Mr. Selimi or his visitors and/interlocutors.

19. Notwithstanding the above, the Registrar has already denied Mr. Selimi's request submitted on 11 January 2023 for a private visit of [REDACTED] pending the Panel's guidance on the conduct of the private visits.<sup>19</sup> Such decision of the Registrar is unsubstantiated and contradicts the Trial Panel's instruction to adopt no restrictive measures in respect of private visits of Mr. Selimi.<sup>20</sup>

**D. Other meetings referred to by the Registrar do not contain confidential information**

20. The Registrar's assessment and information provided in respect of W03879, W01602 and W03811 is irrelevant to the issue of the private visits as none of the persons entitled to the private visits with Mr. Selimi participated in those meetings.<sup>21</sup>
21. Nevertheless, in respect of the WPSO's assessment of a non-privileged visit which occurred on 7 October 2023 between Mr. Selimi, [REDACTED] it is not clear from the WPSO's assessment how the information mentioned during the visit can identify the witness concerned. The WPSO's conclusion that confidential information received in the context of the proceedings or elicited during the testimony of W03879, who is subject to protective measures, may have been disclosed during this visit is based exclusively on the WPSO's assertion that "the name of the witness and/or the witness's brother" was mentioned.<sup>22</sup>

---

<sup>19</sup> Decision on Specific Restrictions, para. 1(d).

<sup>20</sup> Decision, para. 79.

<sup>21</sup> Notification, paras 9-14.

<sup>22</sup> Notification, para. 10.

22. The WPSO is not itself certain whether the name of the witness or the witness's brother may have been mentioned. Moreover, due to the number of unintelligible extracts of the information which precede and follow the name concerned being mentioned and the absence of any contextual information,<sup>23</sup> a mere reference by Mr. Selimi to the name similar to the one mentioned by W03879, who had testified [REDACTED], does not suffice to amount to the risk of disclosure of information identifying the witness concerned.
23. Further, the WPSO assessed that during the visit between Mr. Selimi, [REDACTED] which occurred on 19 August 2023 confidential information received in the context of the proceedings or elicited during the testimonies of W01602 and W03811, who are subject to protective measures.<sup>24</sup> Only the first name of the victim, who is named in the current public redacted version of the SPO's Pre-Trial Brief,<sup>25</sup> was mentioned during the visit, but the identity was not revealed. The names of witnesses W01602 and W03811 were not mentioned in any way during the visit. Moreover, no witness identifying details were provided in the course of the visit, such as the place where these witnesses and the protected victim were from, the month/year of the alleged crime, or the names of the alleged perpetrators.<sup>26</sup>

### III. CLASSIFICATION

24. This submission is filed as confidential pursuant to Rule 82(4) as they refer to confidential Notification. The Defence is of a notice of the Trial Panel's Order on the Publicity of the Proceedings and will file a public redacted version of the

---

<sup>23</sup> Annex 4 to the Notification.

<sup>24</sup> Notification, paras 11-14.

<sup>25</sup> KSC-BC-2020-06/F01415/A01, Public Redacted Version of 'Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F00709/A01, dated 24 February 2022, [REDACTED].

<sup>26</sup> Annexes 6 and 8 to the Notification.



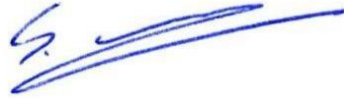
Response either upon the direction of the Trial Panel or following the submission of the public redacted version by the Registrar of the Notification.

#### IV. CONCLUSION AND RELIEF REQUESTED

25. The above submissions establish a flawed assessment of the available audio recordings and transcripts by WPSO as well as erroneous interpretation by the Registrar of the Trial Panel's instructions. In light of the above submissions the Registrar's request for further clarification and guidance of the Trial Panel with respect to Private Visits lacks substantiation and reasoning.
26. The Defence hereby requests the Trial Panel to:
- (i) reiterate to the Registrar its findings on the importance of the private visits for the Accused,
  - (ii) emphasise the necessity in continuity of private visits for the Accused, in particular for Mr. Selimi,
  - (iii) maintain its initial order in respect of Mr. Selimi's private visits Mr. Selimi and
  - (iv) order the Registrar to act within the scope of the measures ordered by the Trial Panel in its Decision with respect to private visits.

Word count: 2208

Respectfully submitted on 7 February 2024,



---

GEOFFREY ROBERTS

Lead Counsel for Rexhep Selimi



---

ERIC TULLY

Co-Counsel for Rexhep Selimi



---

RUDINA JASINI

Co-Counsel for Rexhep Selimi