



SPECIALIST PROSECUTOR'S OFFICE
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In: KSC-BC-2020-06
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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Language: English

Classification: Public

Public redacted version of 'Prosecution request relating to Registry Filing F02082 with confidential Annexes 1 and 2'

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I. INTRODUCTION

1. In its 26 January 2024 filing to this Panel,¹ the Registry identifies several specific violations of court-ordered protective measures committed by Accused Hashim THAÇI and Rexhep SELIMI during visits attended by members of their immediate family. Noting that, in Decision F01977,² the Panel had refrained – at that time – from ordering any monitoring of Private Visits³ on the basis of there not having been a specific indication that such visits had been misused, the Registry sought the Panel’s guidance on how to proceed.

2. The Specialist Prosecutor’s Office (‘SPO’) now provides additional information relevant to the Panel’s consideration of the Registry Notification. Based on the facts presented to date, the SPO requests that the Panel impose a limited set of additional measures to address the heightened risk that THAÇI and SELIMI will use Private Visits to engage in conduct that threatens witness safety and the integrity of the proceedings. Specifically, the SPO requests that the Panel now impose on all Private Visits to THAÇI and SELIMI, regardless of the date on which such visits occur, the same limited, narrowly-tailored active monitoring applicable to other non-privileged visits.⁴ The requested modification is the least restrictive means to achieve the necessary objectives.

¹ Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977, KSC-BC-2020-06/F02082, 26 January 2024, Confidential (‘Registry Notification’).

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

³ Private Visits are ‘in-person visits that are conducted with the Accused’s spouse and/or children and take place outside of the sight and hearing of Detention Officers.’ *See* Decision F01977, KSC-BC-2020-06/F01977.

⁴ *See* Decision F01977, KSC-BC-2020-06/F01977, para.57.

II. SUBMISSIONS

3. The SPO's November 2023 urgent request for detention modifications detailed the pervasive abuse of non-privileged visits by THAÇI, SELIMI and VESELI (the 'Three Accused') to, *inter alia*, reveal protected witnesses' identified and confidential details about closed or private session testimony in direct violation of the Panel's orders.⁵ As a result, the Panel found 'that the current conditions of detention are insufficient to mitigate the risk of the Three Accused in engaging in conduct that could interfere with the proceedings and/or present a risk to the safety and security of witnesses.'⁶

4. At the time of its decision, the Panel declined 'at this stage to adopt restrictive measures in respect to private visits.' This was based on 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 further cautioned, however, 'that it will not hesitate to impose additional restrictions upon private visits should *any party* engage in improper conduct during such visits.'⁷

5. The Registry Notification and the additional information provided below establish that the factual predicate underpinning the Panel's decision on Private Visits has changed, and that further restrictions of Private Visits for THAÇI and SELIMI (at a minimum) are now a necessity.

6. Based on its analysis of multiple audio segments from several non-privileged visits, the Registry has assessed that protected, confidential information pertaining to witnesses W04337, W03879, W01602, W03811, and W04421 'may have been disclosed

⁵ See Public Redacted Version of Prosecution urgent request for modification of detention conditions, KSC-BC-2020-06/F01933, 17 November 2023 ('Urgent Detention Request'), paras 21-26.

⁶ Decision F01977, KSC-BC-2020-06/F01977, para.41.

⁷ Decision F01977, KSC-BC-2020-06/F01977, para.80.

during in-person visits in the Detention Facilities, including during visits with the spouse and/or children of Mr Selimi and Mr Thaçi.’⁸

7. As an initial matter, the SPO submits that the partial recording transcripts prepared and provided by the Registry clearly establish that the potential violations cited by the Registry have in fact occurred. This includes the repeated discussion – clear from the face of Registry-provided transcripts – of information identifying witnesses subject to protective measures, in direct violation of this Panel’s orders. This conduct alone necessitates the imposition of the limited requested modification to address the risk of further violations occurring during Private Visits.

8. In addition to the substantive violations detailed in the Registry’s filing, the transcripts annexed by the Registry establish also that THAÇI, SELIMI, and their visitors – including family members eligible for currently-unmonitored Private Visits – repeatedly participated in visits where tactics were deployed to thwart the Detention Centre’s ability to properly monitor the visits. Specifically, the transcripts reveal that THAÇI, SELIMI, and their visitors whisper, speak in low tones, and play loud music at key points in the visit, demonstrating a conscious intention to obscure what is being said. That individuals who currently remain free to engage in entirely unmonitored Private Visits participated in visits where such conduct occurred is alarming. Permitting this to go unaddressed presents a heightened, concrete risk of further violations threatening witness safety and the integrity of the proceedings. Indeed, based solely on the Registry’s presentation of facts, the requested (limited) restrictions on Private Visits is critical and is precisely the necessary further mitigation that this Panel already foreshadowed it would impose.

9. Furthermore, in addition to the visit recordings already cited by the Registry, the SPO further notes that [REDACTED] was present for and participated in the non-privileged 20 October 2023 visit to THAÇI along with [REDACTED] (the ‘October 20

⁸ Registry Notification, KSC-BC-2020-06/F02082, para.5.

Visit'). The SPO's preliminary review of the judicially-authorized recording of this visit indicates that THAÇI and his visitors discussed multiple witnesses in this case, including SPO witness [REDACTED], who testified subject to protective measures. During the visit, THAÇI identified [REDACTED] *by name* and other biographical information, and summarised some of the content of [REDACTED]'s trial testimony.⁹

10. At another point in the 20 October Visit, THAÇI and [REDACTED] discuss '[REDACTED]'¹⁰ The SPO assesses this to be a reference to the [REDACTED] private session proceedings regarding SPO protected witness [REDACTED].¹¹ This portion of the trial transcript remains confidential.

11. At another point in the visit [REDACTED] discusses a witness [REDACTED], a clear reference to the private session testimony of protected SPO witness [REDACTED]. [REDACTED], from [REDACTED].¹²

12. The audio recording of the 20 October 2023 visit indicates also that THAÇI and his visitors – including [REDACTED] – whispered and/or spoke in lower tones at key points in the visit, rendering portions of the recording inaudible.¹³

⁹ See 116642 201023-080857-TR-AT-ET, attached hereto as Annex 1, at pages 5-6.

¹⁰ See 116642 201023-114357 TR-AT-ET, attached hereto as Annex 2, at pages 1-2. In addition to their annexing here, the SPO transcripts contained in Annexes 1 and 2 will be also disclosed to the Accused as part of the SPO's ongoing disclosure of non-privileged visit transcripts as the transcripts become available.

¹¹ See Transcript Trial Hearing [Private Session], [REDACTED].

¹² See Annex 2, pp. 1-2. The SPO further notes that, per the Registry Notification (paragraphs 13-14), the private session testimony of [REDACTED] was also discussed during SELIMI's 19 August 2023 non-privileged visit with [REDACTED] and [REDACTED].

¹³ The SPO further recalls that in its Urgent Detention Request, the SPO specifically noted that the incidents of misconduct described therein were examples of the conduct in question, not exhaustive. See Urgent Detention Request, KSC-BC-2020-06/F01933, fn.11. The SPO will continue to apprise the Panel of additional such conduct as it is uncovered, and seek relief as warranted under the Law and Rules.

13. Finally, the SPO further recalls, relevant to the Panel's consideration of the requested modifications, that [REDACTED].¹⁴ [REDACTED].¹⁵

III. CONCLUSION AND RELIEF REQUESTED

14. In summary, the SPO recalls the Panel's prior finding that the 'combined effect' of THAÇI's and SELIMI's actions 'has increased the risks associated with the impermissible disclosure of protected information' and has 'created a multiplicity of paths that could result in third parties interfering with these proceedings.'¹⁶ The current conditions regarding Private Visits create the untenable risk that such entirely unmonitored visits will be another path of attempted interference with this case. Indeed, the additional measures already adopted by this Panel in Decision F01977 narrow the opportunities in a manner which significantly increases the incentive for misuse of Private Visits.

15. Accordingly, the SPO respectfully requests the Panel to order that all Private Visits to THAÇI and SELIMI be subject to the same active monitoring now used for all other non-privileged, non-consular visits as detailed in Decision F01977.¹⁷

IV. CLASSIFICATION

16. This filing is classified as confidential pursuant to Rule 82(4) in light of the classification of the Registry submissions. The SPO submits that a public redacted version cannot at this time be issued because disclosure of the information contained herein – as well as the relief requested – could pose serious risks to the integrity of the proceedings and undermine the purpose of the requested measures.

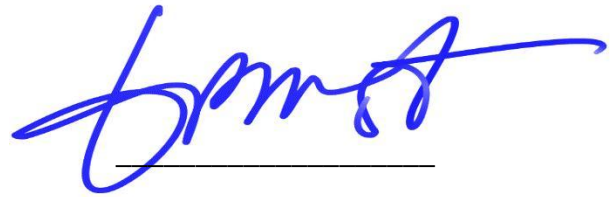
¹⁴ See [REDACTED].

¹⁵ [REDACTED].

¹⁶ Decision F01977, KSC-BC-2020-06/F01977, para.40.

¹⁷ See Decision F01977, KSC-BC-2020-06/F01977, para.57.

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Wednesday, 7 February 2024

At The Hague, The Netherlands.