



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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 Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

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with confidential Annexes 1-10'

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I. INTRODUCTION

1. Pursuant to the Decision¹ of Trial Panel II ('the Panel'), the Registrar has been ordered to take measures and to implement modifications to the conditions of detention² ('Modified Conditions') of Mr Hashim Thaçi, Mr Kadri Veseli and Mr Rexhep Selimi (the 'Three Accused').

2. As part of the Modified Conditions, all non-privileged in-person visits, video visits, and telephone calls require the prior approval of the Registrar so that all relevant considerations (legal, practical, security) can be factored into the decision of whether to authorise a particular visit or communication and/or engage in active monitoring.³ Prior to authorising visits and communications, the Panel directed the Registrar to, where needed, consult with the Specialist Prosecutor's Office ('SPO') to determine if there are indications that any would-be interlocutor has engaged or could engage in conduct incompatible with the integrity of the proceedings or the protection of confidential information.⁴

3. In its Decision, the Panel also noted that it has declined, at this stage, to adopt any restrictive measures with respect to Private Visits.⁵ Private Visits are in-person visits that are conducted with the Accused's spouse and/or children and take place

¹ 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, public ('Decision').

² Decision, paras 51-53, 55-60 and 62-78.

³ Decision, paras 51-52, 62-63. As ordered by the Panel, non-privileged in-person visits are actively monitored, excluding Consular visits with proper authorization and Private Visits. Decision, paras 57, 80. It should also be noted that telephone calls, by default, are passively monitored. *See* Decision, para. 65; *see also* Practice Direction on Visits and Communications, KSC-BD-09-Rev1, 23 September 2020 ('PD on Visits and Communications'). Likewise, video visits are as a rule supervised (passively monitored) in that they are conducted within the sight and general hearing of Detention Officers. *See* Registry Instruction on Video Visits, KSC-BD-34-Rev1, 6 September 2021 ('Registry Instruction'), sect. 6(1). Private Visits are in-person only and do not take place over video. *See id.* As ordered by the Panel, the Registrar can decide to actively monitor video visits and telephone calls where, "in the exercise of her discretion, or under the guidance of the Panel where needed," she "finds it necessary to ensure the integrity of the proceedings, the protection of confidential information and/or to ensure compliance by the Three Accused or those in contact with them with the measures ordered" in the Panel's Decision. Decision, para. 66.

⁴ *See* Decision, paras 51, 62.

⁵ Decision, para. 80.

outside of the sight and hearing of Detention Officers.⁶ The Panel noted, however, that should any party engage in improper conduct during such visits that it would not hesitate to impose additional restrictions.⁷

4. In line with the Decision, and the system of prior approval put in place by the Registrar,⁸ the Three Accused submitted requests for visits and communications with certain individuals for prior approval. As part of the authorisation process, the SPO was requested to inform if there are any indications that any of the would-be interlocutors has engaged or could engage in conduct incompatible with the integrity of the proceedings or the protection of confidential information. In response, the SPO provided discrete audio recordings of certain, specific non-privileged visits of Mr Thaçi and Mr Selimi in the Detention Facilities. To enable the Registrar's decision-making, the audio recordings, which are also available to the Defence,⁹ were transcribed and translated.¹⁰ In accordance with Rule 27(2)(e) of the Rules,¹¹ the Registrar requested the Witness Protection and Support Unit ('WPSO') of the Registry to analyse the transcripts against protected witness testimony.

5. 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 during in-person visits in the Detention Facilities, including during visits with the spouse and/or children of Mr Selimi and Mr Thaçi. In view of WPSO's

⁶ See Decision, para. 57; see also PD on Visits and Communications, art. 24(1).

⁷ Decision, para. 80.

⁸ F01989, Registry Update on Implementation Pursuant to Trial Panel II's Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions, public, with confidential Annex 1 and confidential and *ex parte* Annexes 2-4, 7 December 2023.

⁹ See F01933, Prosecution urgent request for modification of detention conditions, 17 November 2023, confidential, at fn. 9 (noting that authorization was obtained for the SPO to audio record all non-privileged, non-conjugal visits during the authorized period and that the SPO is arranging for handover to the Defence of copies of all recorded visits in the Detention Facilities).

¹⁰ The Registry transcribed and translated all audio recordings with the exception of Annex 4, where a draft transcript was made available to the Registry by the SPO. See Annex 4, fn. 20, below.

¹¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3, 2 June 2020 ('Rules').

responsibilities under Article 23(3) of the Law¹² and Rule 27 of the Rules, and the Panel's Decision with respect to Private Visits, the Registrar hereby notifies the Panel of this possible disclosure and seeks further guidance from the Panel with respect to the conduct of Private Visits.

II. SUBMISSIONS

6. Below is a summary of possible disclosures, based on WPSO's review of the limited selection of transcribed audio recordings against protected witness testimony. The relevant transcripts and excerpts of witness testimony are also annexed to this submission as Annexes 1-10.

A. W04337

7. The Panel authorised in-court protective measures for W04337.¹³ On 10 July 2023, W04337 testified in *private* session that he [REDACTED]¹⁴ On 11 July 2023, W04337 was also asked questions about whether he was hoping [REDACTED]¹⁵

8. On 15 July 2023, a non-privileged in-person visit took place between Mr Selimi and visitors [REDACTED], [REDACTED] and [REDACTED]. This visit was recorded, and transcripts of the visit were produced.¹⁶ Based on a review of the transcript of this visit against W04337's testimony in private session, WPSO assesses that 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. This is based on a combination of specific references to [REDACTED] and [REDACTED] during the visit.¹⁷

¹² Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

¹³ F00133/COR/CONF/RED, Confidential Redacted Version of Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures, 10 December 2023, confidential ('First Decision on Protective Measures'), para. 132(q).

¹⁴ Annex 1, Trial Hearing [Private Session], 10 July 2023, confidential, Tr. pp 5308-5310.

¹⁵ Annex 1, Trial Hearing [Private Session], 11 July 2023, confidential, Tr. pp. 5422-5426.

¹⁶ Annex 2, Audio Transcripts 150723-075000 and 150723-72500.

¹⁷ *Id.*

B. W03879

9. The Panel authorised in-court protective measures for W03879.¹⁸ On 14 August 2023, during his testimony and while in *private* session, W03879 confirmed his name and the name of his brother.¹⁹

10. On 7 October 2023, a non-privileged in-person visit took place between Mr Selimi and visitors [REDACTED] and [REDACTED]. This visit was recorded, and transcripts of the visit were produced.²⁰ Based on a review of the transcript of this visit against W03879's testimony in private session, WPSO assesses 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 the visit. This is based on a reference to the name of the witness and/or the witness's brother during the visit.²¹

C. W01602

11. The Panel authorised in-court protective measures for W01602.²² On 14 June 2023, during his testimony and while in *private* session, W01602 referred to his sister, [REDACTED], and confirmed that there were rumours that she was dating two [REDACTED], and [REDACTED].²³

12. On 19 August 2023, a non-privileged in-person visit took place between Mr Selimi and visitors [REDACTED] and [REDACTED]. This visit was recorded, and a transcript of the visit was produced.²⁴ Based on a review of the transcript of this visit against W01602's testimony in private session, WPSO assesses that confidential

¹⁸ First Decision on Protective Measures, para. 132(q).

¹⁹ Annex 3, Trial Hearing [Private Session], 14 August 2023, confidential, Tr. pp. 6257-6258.

²⁰ Annex 4, Audio Transcript 071023-074000-TR-ET (transcribed and translated by SPO).

²¹ *Id.*

²² F00438/CONF/RED, Confidential Redacted Version of Eighth Decision on Specialist Prosecutor's Request for Protective Measures, 24 August 2021, confidential ('Eighth Decision on Protective Measures'), para. 93(m).

²³ Annex 5, Trial Hearing [Private Session], 14 August 2023, confidential, Tr. pp. 4891-4896.

²⁴ Annex 6, Audio Transcript 190823-082500.

information received in the context of the proceedings or elicited during the testimony of W01602, who is subject to protective measures, may have been disclosed during the visit. This is based on a combination of specific references to [REDACTED] among others, during the visit.²⁵

D. W03811

13. The Panel authorised full in-court protective measures for W03811.²⁶ On 19 June 2023, during his testimony and while in *private* session, W03811 referred to [REDACTED] and two other individuals named [REDACTED]²⁷

14. On 19 August 2023, a non-privileged in-person visit took place between Mr Selimi and visitors [REDACTED] and [REDACTED]. This visit was recorded, and transcript of the visit was produced.²⁸ Based on a review of the transcript of this visit against W03811's testimony in private session, WPSO assesses that confidential information received in the context of the proceedings or elicited during the testimony of W03811, who is subject to protective measures, may have been disclosed during the visit. This is based on a combination of specific references to [REDACTED], among other references, during the visit.²⁹

E. W04421

15. The Panel also authorised in-court protective measures for W04421.³⁰ On 20 April 2023, W04421 testified in *closed* session and referred to [REDACTED] and that

²⁵ *Id.*

²⁶ Eighth Decision on Protective Measures, para. 93(m).

²⁷ Annex 7, Trial Hearing [Private Session], 20 June 2023, confidential, Tr. pp. 5098, 5130-31, 5173, 5179-5181.

²⁸ Annex 8, Audio Transcript 190823-082500.

²⁹ *Id.*

³⁰ First Decision on Protective Measures, para. 132(q).

[REDACTED] could only speak about the [REDACTED] region.³¹ W04421 was also asked questions about [REDACTED].³²

16. On 22 September 2023, a non-privileged in-person visit took place between Mr Thaçi and visitors [REDACTED] and [REDACTED]. This visit was recorded, and a transcript of the visit was produced.³³ Based on a review of the transcript of this visit against W04421's testimony in closed session, WPSO assesses that confidential information received in the context of the proceedings or elicited during the testimony of W04421, who is subject to protective measures, may have been disclosed during the visit. This is based on a combination of references to [REDACTED], among other references, during the visit.³⁴

III. RELIEF REQUESTED

17. As ordered by the Panel, the Registrar has implemented the measures and modifications to the conditions of detention of the Three Accused in line with the Decision.³⁵ Accordingly, the Registrar will continue to take measures in line with the Decision where there are credible indications that any would-be interlocutor has engaged or could engage in conduct incompatible with the integrity of the proceedings or the protection of confidential information and/or to ensure compliance by the Three Accused or those in contact with them with the measures ordered in Decision and the detention regulations.

18. In its Decision, however, the Panel declined to adopt any restrictive measures in respect of Private Visits, noting that "there is no indication of these visits having been used to engage in improper conduct so far".³⁶ The Panel further stated that it "wishe[d] to make it very clear, however, that it will not hesitate to impose additional restrictions

³¹ Annex 9, Trial Hearing [Closed Session], 20 April 2023, confidential, Tr. pp. 3275, 3288, 3299, 3331, 3333-3334, 3345.

³² *Id.*, Tr. pp. 3376, 3378, 3384.

³³ Annex 10, Audio Transcripts 220923-093047 and 220923-093547.

³⁴ *Id.*

³⁵ Decision, paras 51-53, 55-60 and 62-78.

³⁶ Decision, para. 80.

upon private visits should any party engage in improper conduct during such visits".³⁷

19. In view of the Panel's Decision concerning Private Visits,³⁸ and the submissions above, the Registrar seeks further guidance from the Panel with respect to the conduct of Private Visits.

IV. CLASSIFICATION

20. This submission and its Annexes are filed as confidential, as they refer to confidential witness testimony that was elucidated in private and/or closed session, as well as visits of the Accused that were recorded by the SPO pursuant to judicial authorisation.

Word count: 2186



Dr Fidelma Donlon
Registrar

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³⁷ *Id.*

³⁸ Decision, paras 80, 82.