

**Public Redacted Version of**  
**"ANNEX 1 to Transmission of Rexhep Selimi's Request for**  
**Judicial Review of the Registrar's Decision of 29 January**  
**2024, KSC/REG/IOR/6722"**

Public

**Date: 07 February 2024**

**To: Registrar, Dr Fidelma Donlon**

**PUBLIC**

**Public Redacted Version of the Request for Judicial Review of the Decision of the Registrar on Specific Restrictions pursuant to Decision F01977, No. KSC/REG/IOR/6722, dated 29 January 2024**

**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's') assessment, 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.<sup>3</sup>
2. On 29 January 2024, based on the Notification, 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] and [REDACTED], (ii) actively monitor video visits Mr. Selimi has requested with [REDACTED], (iii) deny Mr. Selimi's request for

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<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, para. 4 and 5.

<sup>4</sup> KSC/REG/IOR/6722, Decision of the Registrar on Specific Restrictions pursuant to Decision F01977, 29 January 2024, ("Impugned Decision"). Mr. Selimi received a written Albanian translation of the Impugned Decision on 31 January 2024.

a telephone call with [REDACTED] ([REDACTED] on Mr. Selimi's Defence Team) 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.<sup>5</sup>

3. On 7 February 2024, the Defence for Mr. Selimi filed a Response to the Registry's Notification.<sup>6</sup>

4. Pursuant to Article 9 of the Practice Direction of Complaints, Mr. Selimi hereby requests judicial review of the Impugned Decision in respect of the Registrar's decision to (i) actively monitor the video visits and telephone calls [REDACTED], and (ii) deny Mr. Selimi's request for a telephone call with [REDACTED] ([REDACTED] on Mr. Selimi's Defence Team) and (iii) defer her decision on Mr. Selimi's request for Private Visits with [REDACTED], pending the Panel's guidance on the conduct of private visits.

## II. SUBMISSIONS

### A. **Decision to actively monitor the video visits and telephone calls with [REDACTED]**

5. The Registrar provides that the decision to actively monitor video visits and telephone calls with [REDACTED] was adopted based on the reasons outlined in the Notification, pursuant to the Trial Panel's Decision<sup>7</sup> and Article 4(2) and 7 of the Practice Direction.<sup>8</sup>

6. Mr. Selimi hereby reiterates that the Registrar, and WPSO in particular, erred in their assessment of the discrete audio recordings of non-privileged visits of Mr. Selimi. The combination of certain oblique references mentioned during the visit on

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<sup>5</sup> Impugned Decision, para.1.

<sup>6</sup> 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, 7 February, ("Defence Response to Registry's Notification").

<sup>7</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, ("Trial Panel's Decision").

<sup>8</sup> Impugned Decision, paras 13-16

15 July 2023, to which [REDACTED] was listed as a participant, does not either directly or indirectly identifies the protected witness concerned.<sup>9</sup> The information identified by the Registrar in the Notification is therefore too broad and lacks specificity or identifying features of the protected witness, W04337 in this case.<sup>10</sup>

7. Further, Mr. Selimi reiterates that the Registrar erred in attributing conduct incompatible with the integrity of the proceedings to [REDACTED]. In particular it is not clear from the available transcripts of this conversation which participant was speaking at any particular time, and indeed whether [REDACTED] was even present in the room at the time when such information was mentioned.<sup>11</sup>

8. The Trial Panel has already ordered certain restrictions to the conditions of video and phone conversations<sup>12</sup> which should minimise, if not at all eliminate, any risks of potential disclosure of confidential information or interference with the integrity of the proceedings.

9. Moreover, since the conditions ordered by the Trial Panel's Decision were implemented there have been no reports or notifications from the Registry on any incidents of the breach of such conditions by Mr. Selimi.

10. It is stressed in the Trial Panel's Decision that "in a detention setting, it is an essential part of a detainee's right to respect for family life that contact with close relatives be maintained".<sup>13</sup>

11. At least four [REDACTED] calls scheduled for Mr. Selimi in February 2024 list [REDACTED] as participants.<sup>14</sup> All such calls will be also actively monitored pursuant to the Impugned Decision<sup>15</sup> which would make conversations with both [REDACTED] unjustly subjected to additional restrictions.

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<sup>9</sup> Defence Response to the Registry's Notification.

<sup>10</sup> See Notification at para. 8 for the combinations referenced by the Registrar.

<sup>11</sup> Defence Response to the Registry's Notification.

<sup>12</sup> Trial Panel's Decision, para. 64.

<sup>13</sup> Trial Panel's Decision, para. 46.

<sup>14</sup> Impugned Decision, para. 15.

<sup>15</sup> Impugned Decision, para. 15.

12. In light of the above, Mr. Selimi submits that the Registrar's decision to actively monitor the video visits and telephone calls with [REDACTED], is unsubstantiated and outside of scope of the measures ordered or instructions given by the Trial Panel in its Decision.

**B. Decision to deny Mr. Selimi's request for a telephone call with [REDACTED].**

13. Mr. Selimi requested to schedule a non-privileged telephone call with [REDACTED] on 6 February 2024.

14. For the reasons set out in the Notification and to ensure that any would-be interlocutors has not engaged in conduct incompatible with the integrity of the proceedings or the protection of confidentiality, the Registrar denied Mr. Selimi's request for a telephone call.<sup>16</sup>

15. The Registrar failed to consider the Trial Panel's finding that "a system should be out in place which focuses on identifying and excluding only those individuals who could pose a threat to the integrity of the proceedings or engage in conduct incompatible with the regulation of the DMU".<sup>17</sup> Denying Mr. Selimi's request for a telephone call with [REDACTED], who is currently an [REDACTED] on Mr. Selimi's Defence Team, contravenes the Trial Panel's instruction.

16. The Defence provides in its Response to the Registry's Notification reasons for the Registrar's flawed attribution of conduct incompatible with the integrity of the proceeding to [REDACTED].<sup>18</sup> Attribution of such conduct to [REDACTED] in the same circumstances is similarly flawed. As provided in the Defence Response to the Registry's Notification, it is not clear from the transcript of 15 July 2023 visit who volunteered allegedly identifying information with respect to W04337 during that

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<sup>16</sup> Impugned Decision, paras 17-19.

<sup>17</sup> Trial Panel's Decision, para. 52 [emphasis added].

<sup>18</sup> Defence Response to the Registry's Notification.

visit and who was present in the room at the time when such information was volunteered.<sup>19</sup>

17. [REDACTED] is listed as a participant of a visit occurred on 7 October 2023. Similarly, the topic of the discussion is not clear from the transcript of the audio recording of the visit. A mere reference by Mr. Selimi to the name similar to the one mentioned during the testimony of the protected witness who had testified [REDACTED] prior to that visit does not suffice to amount to the risk of disclosure of information identifying a witness subject to protective measures.

18. In addition, [REDACTED] is a team member of Mr. Selimi's Defence Team and was a team member throughout the testimonies of both W04337 and W03879. [REDACTED] is therefore already privy to the identity of both these witnesses in accordance with his appointment. Thus, [REDACTED] listening to a combination of certain potentially identifying references of these witnesses as suggested by the Registrar or of a certain name similar to the one provided by the protected witness in the testimony may not in any way categorise [REDACTED] as an individual posing a threat to the integrity of the proceedings. Therefore, [REDACTED] should not be excluded from the list of Mr. Selimi's non-privileged callers.

**C. Decision to defer decision on Mr. Selimi's request for Private Visits with [REDACTED]**

19. In substantive terms, Mr. Selimi reiterates the submissions of the Defence in its Response to the Registry's Notification, in particular that the Registrar's decision to defer Mr. Selimi's request for a private visit and to seek guidance from the Trial Panel on the conduct of private visits was unsubstantiated and contradicts the Trial Panel's finding to adopt no restrictive measures in respect of private visits of him.<sup>20</sup> There is no justification for refusing such a visit from [REDACTED] as set out therein.

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<sup>19</sup> Defence Response to the Registry's Notification.

<sup>20</sup> Trial Panel's Decision, para. 79.

20. However, it is also noted in this respect, that the Notification was filed shortly before the deadline for deciding upon visits during February. [REDACTED] had planned to visit between 8-11 February 2024 as notified to the DMU well in advance. In light of the restrictive visitation and communication schedule that has been implemented by the Registrar in relation to the Trial Panel's Decision, this is the only private [REDACTED] visit of Mr. Selimi that could occur during this month. Therefore, while the Impugned Decision is referred to as a deferral by the Registrar, in reality, it constitutes an effective denial of the visit. While any reversal of that decision is too late for [REDACTED] to visit in February, it must be assessed and reversed on that basis.

### **III. CONCLUSION AND RELIEF REQUESTED**

21. The above submissions along with the Defence Response to the Registry's Notification establish that the Impugned Decision is based on the Registrar's flawed assessment of the information available from the audio recordings of Mr. Selimi's visits and goes beyond the scope of the measures ordered and instructions given by the Trial Panel in its Decision.

22. Therefore, Mr. Selimi hereby requests to:

- Review the Impugned Decision
- Reverse Registrar's decision to actively monitor the video visits and telephone calls with [REDACTED],
- Reverse Registrar's decision to deny Mr. Selimi's request for a telephone call with [REDACTED], and
- Reverse the Registrar's effective denial of the private visit of [REDACTED].



**Rexhep Selimi**