

Public Redacted Version of
"ANNEX 2 to Transmission of Rexhep Selimi's Request for
Judicial Review of the Registrar's Decision of 29 January
2024, KSC/REG/IOR/6722"

Public

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KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

To: Rexhep Selimi

Copy: Chief Detention Officer, Detention Management Unit

The Hague, 29 January 2024

KSC/REG/IOR/6722

DECISION OF THE REGISTRAR

On Specific Restrictions Pursuant to Decision F01977

1. In accordance with Decision F01977¹ issued by Trial Panel II ('the Panel') and the Practice Direction on Visits and Communications ('Practice Direction'),² the Registrar has decided to:

- a. *actively monitor* the telephone calls you have requested with [REDACTED], [REDACTED], and [REDACTED];
- b. *actively monitor* the video visits you have requested with [REDACTED];
- c. *deny* your request for a telephone call with [REDACTED]; and
- d. *defer* her decision on your request for Private Visits with [REDACTED], pending the Panel's guidance on the conduct of Private Visits.

Decision F01977

2. Pursuant to Decision F01977, the Panel ordered the Registrar to take measures and to implement modifications to the conditions of detention of Mr Hashim Thaçi, Mr Kadri Veseli and Mr Rexhep Selimi (the 'Three Accused').³

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 F01977').

² Practice Direction on Visits and Communications, KSC-BD-09-Rev1, 23 September 2020 ('Practice Direction').

³ Decision F01977, fn. 1, above.

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3. As described in Decision F01977, 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 factor into the decision of whether to authorise a particular visit or communication and/or engage in active monitoring.⁴

4. Prior to authorising video visits and telephone calls, the Registrar was also directed “to ensure that any would-be interlocutor has not engaged in conduct incompatible with the integrity of the proceedings or the protection of confidential information”.⁵

5. With regard to active monitoring, the Panel ordered the Registry “to engage in active monitoring (of which the Accused shall be notified) of both video and audio visits and communications when the Registrar, in the exercise of her discretion, or under the guidance of the Panel when needed, 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 Decision F01977.⁶

6. Prior to authorising visits and communications (and in order to identify those whose visits and communications should be monitored), the Panel further 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.⁷

7. In Decision F01977, the Panel also noted that it has declined, at this stage, to adopt any restrictive measures with respect to Private Visits.⁸ 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.⁹ The Panel noted, however, that should any party engage

⁴ Decision F01977, paras 51-52, 62-63, 66.

⁵ Decision F01977, para. 62.

⁶ Decision F01977, para. 66.

⁷ See Decision F01977, paras 51, 62, 66.

⁸ Decision F01977, para. 80.

⁹ See Decision F01977, para. 57; see also Practice Direction, art. 24(1).

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in improper conduct during such visits that it would not hesitate to impose additional restrictions.¹⁰

Factual Background

8. On 11 January 2024, you submitted a timely request [REDACTED] [REDACTED]¹¹ for prior approval of visits and communications with certain individuals in the month of February 2024.

9. On 26 January 2024, the Registrar filed a notification with the Panel in relation to court ordered protective measures ('Notification').¹² In the Notification, the Registrar informed the Panel that 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 following individuals with whom you have requested visits and communications: [REDACTED], [REDACTED], [REDACTED], and [REDACTED].¹³

Decision on Active Monitoring

10. As noted by the Panel, a Detainee's visits and communications are subject "to the possibility of necessary and proportionate restrictions being placed upon them to protect the rights and security of others, in particular victims and witnesses".¹⁴ In this regard, the measures ordered by the Panel in Decision F01977 "are solely intended to prevent the impermissible disclosure of confidential information, including the identity of protected witnesses, and guarantee the integrity of the proceedings".¹⁵

11. Specifically, in Decision F01977, the Panel reiterated "that the Accused are prohibited from disclosing or discussing with anyone other than their counsel and Defence team

¹⁰ Decision F01977, para. 80.

¹¹ Letter from the Registrar to the Three Accused and Counsel, Subject: Measures in place to implement Decision F01977, KSC/REG/IOR/6548, 7 December 2023, confidential.

¹² F02082, Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977, 26 January 2024, confidential ('Notification').

¹³ Id.

¹⁴ Decision F01977, para. 30; *see also* Practice Direction, art. 4(2).

¹⁵ Decision F01977, para. 30.

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members information subject to protective measures, in particular the names and details of SPO witnesses, confidential information and/or the content of evidence given in private or closed session”.¹⁶ “This includes information which, directly or indirectly, could identify witnesses subject to protective measures”.¹⁷ The Panel further noted that such “disclosure to unauthorised third parties could constitute grounds for an offence under the applicable legal regime”.¹⁸

12. As described above, the Panel ordered the Registrar to engage in active monitoring when the Registrar, in the exercise of her discretion, finds it necessary, among other things, to ensure the integrity of the proceedings and the protection of confidential information.¹⁹

13. For the reasons outlined in the Notification, and pursuant to Decision F01977 and Articles 4(2) and 7 of the Practice Direction, the Registrar finds that active monitoring of certain requested visits and communications is necessary to achieve the legitimate aims of ensuring the integrity of the proceedings and the protection of confidential information.

14. Accordingly, the Registrar has decided to actively monitor your telephone calls with the following individuals: [REDACTED], [REDACTED], and [REDACTED]. This means that the following telephone calls will be actively monitored in February 2024:

Date	Time	Name(s)	Type of Visit / Call
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¹⁶ Decision F01977, para. 36.

¹⁷ Decision F01977, para. 36.

¹⁸ Decision F01977, para. 36; *see also* Decision F01977, para. 37 (Without making a determination as to whether certain conduct reflected in transcripts of communications provided by the SPO constitutes an offence on the part of any of the Accused, the Panel noted that the information provided “illustrates a substantial risk that, without adequate measures being put in place, the Three Accused will impermissibly disclose privileged information to unauthorised third parties”).

¹⁹ Decision F01977, para. 66.

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15. For the same reason, the Registrar has decided to actively monitor your video visits (██████████) with ██████████. This means that the following video visits will be actively monitored in February 2024:

Date	Time	Name(s)	Type of Visit / Call
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[Redacted Table Content]			
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16. Given the content of the Notification, and noting that the active monitoring of your visits and communications is specific to those who have been identified in the Notification, this measure is considered proportionate to the legitimate aims pursued.

Decision to Refuse a Telephone Call

17. You have requested a non-privileged telephone call with ██████████, a member of your Defence team ██████████ on ██████████

18. Prior to authorising video visits and telephone calls, the Registrar was directed by the Panel “to ensure that any would-be interlocutor has not engaged in conduct incompatible with the integrity of the proceedings or the protection of confidential information”.²⁰

19. In view of the above, and for the reasons outlined in the Notification, your request to have a non-privileged telephone call with ██████████ is denied.

20. Pursuant to Decision F01977 and Articles 4(2) and 7 of the Practice Direction, the Registrar finds that excluding ██████████ from participating in the requested non-privileged telephone call is necessary to achieve the legitimate aims of ensuring the integrity of the proceedings and the protection of confidential information.

21. This denial does not affect your ability to have privileged telephone calls (and visits) with Counsel and/or Co-Counsel, which are not affected by Decision F01977.

²⁰ Decision F01977, para. 62.

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Deferral of Decision on Private Visits

22. In the Notification to the Panel, the Registrar sought further guidance from the Panel with respect to Private Visits.²¹ Pending further guidance from the Panel, the Registrar has decided to defer her decision on your request for Private Visits with [REDACTED]. Your request for Private Visits with [REDACTED] and [REDACTED] have been approved, and you will be informed of the outcome of your request with respect to [REDACTED] in due course.

Judicial Review

23. You have the right to seek judicial review of the Decision on Active Monitoring and the Decision to Refuse a Telephone Call within 7 days of being notified of the Decision.²² As set forth in Decision F01977, a request for judicial review shall comply with Article 9(2)-(6) of the Practice Direction on Complaints.²³ Pursuant to Article 5(4) of the Practice Direction on Complaints, time limits shall not run until a Detainee has received a written translation of the relevant Decision in a language the Detainee understands.

Dr Fidelma Donlon

Registrar

²¹ Notification, para. 19.

²² See Decision F01977, paras 66, 69; see also F02028, Decision on Urgent Request for an Order to the Registrar Regarding Implementation of Decision F01977, 21 December 2023, para. 15 (“In its Decision, the Panel provided for a right of judicial review of the Registrar’s decision to refuse a request for an in-person or video visit, telephone communication, or to implement active monitoring of a video visit. Such a complaint may be made directly to the Panel within seven days.”).

²³ Decision F01977, para. 69; see also Practice Direction on Complaints, KSC-BD-11-Rev1, 23 September 2020.

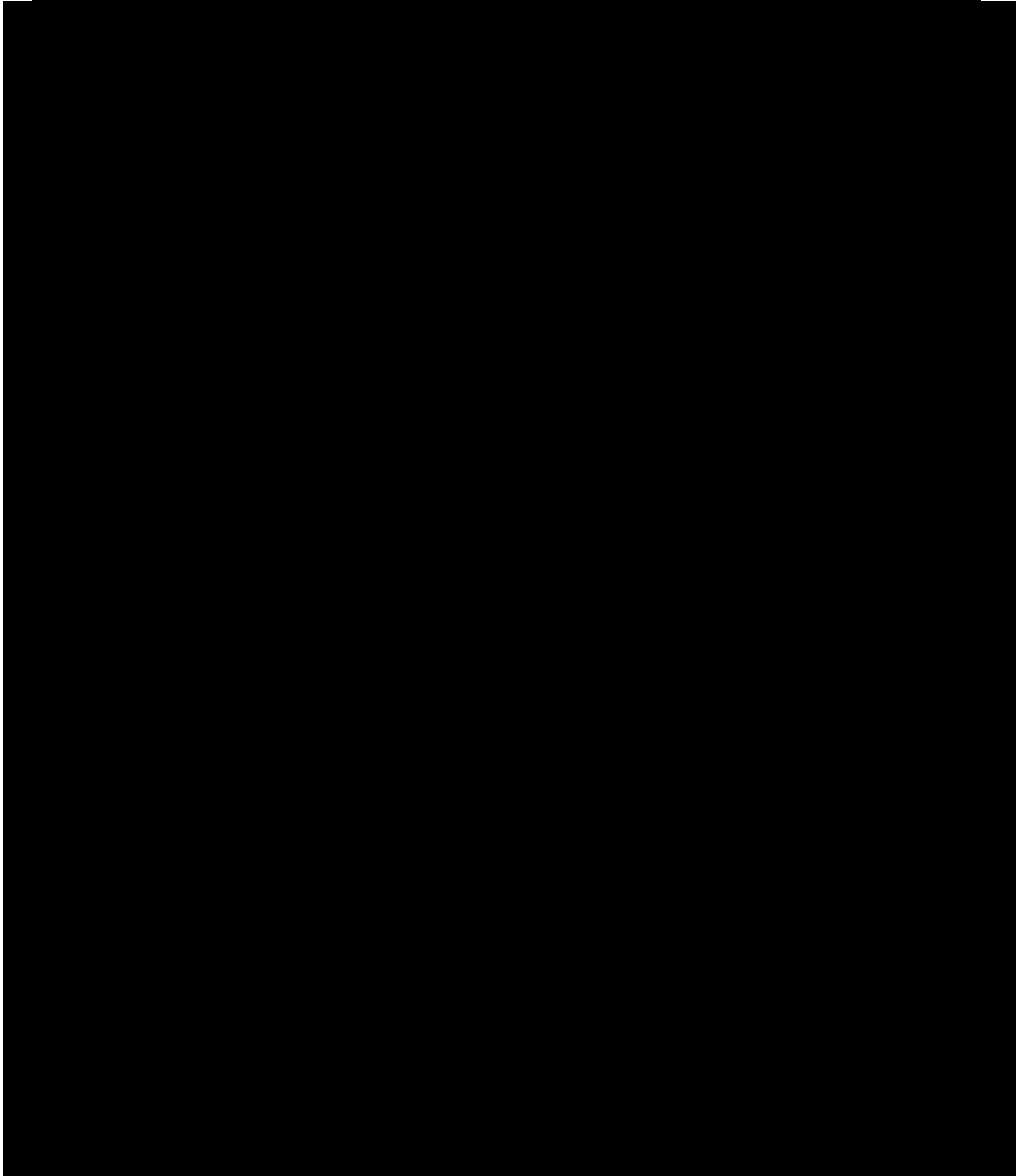
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Annex 1

Date	Time	Name(s)	Type of Visit / Call
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Annex 1

Date	Time	Name(s)	Type of Visit / Call
[Redacted content]			

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Annex 1

Date	Time	Name(s)	Type of Visit / Call
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*Pursuant to Decision of the Registrar, KSC/REG/IOR/6722, 29 January 2024.