



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The 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: Fidelma Donlon

Date: 22 March 2024

Language: English

Classification: Public

**Decision on Rexhep Selimi's Request for Judicial Review of Registrar's Decision
on Reconsideration**

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TRIAL PANEL II of the Kosovo Specialist Chambers (“Panel”), pursuant to Articles 3(2), 23, 34(12), 40(2), 40(6)(d) and (f) and 41(9) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), Rules 23(7), 27, 56(6), and 116(4)(d) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), and Article 9 of the Registry Practice Direction on Detention: Complaints (“Registry Practice Direction on Complaints”),¹ renders this decision.

I. PROCEDURAL BACKGROUND

1. The procedural background concerning the arrest and detention of Rexhep Selimi (“Mr Selimi”) has been set out extensively in previous decisions.²
2. On 1 December 2023, following a motion from the Specialist Prosecutor’s Office (“SPO”),³ the Panel imposed restrictions on the conditions of detention of Mr Selimi based on information submitted to the Panel by the SPO (“F01977 Decision”).⁴
3. On 7 December 2023, the Registrar filed an update on the implementation of the Panel’s Decision (“Registrar’s Update”).⁵ On the same date, the Registrar notified Mr Selimi’s Defence Counsel, *inter alia*, of the Registrar’s Update and the

¹ KSC-BD-11/Rev1, Registrar, *Registry Practice Direction on Detainees: Complaints*, 23 September 2020.

² See e.g. F00802, Pre-Trial Judge, *Decision on Periodic Detention Review of Rexhep Selimi*, 13 May 2022, confidential, paras 1-12. A public redacted version was issued on 24 May 2022, F00802/RED.

³ F01933, Specialist Prosecutor, *Prosecution Urgent Request for Modification of Detention Conditions*, 17 November 2023, confidential, with Annexes 1-5, confidential.

⁴ F01977, Trial Panel, *Further Decision on the Prosecutor’s Urgent Request for Modification of Detention Conditions for Hashim Thaci, Kadri Veseli, and Rexhep Selimi*, 1 December 2023.

⁵ F01989, Registrar, *Registry Update on Implementation Pursuant to Trial Panel II’s Further Decision on the Prosecution’s Urgent Request for Modification Conditions*, 7 December 2023, with Annex 1, confidential, and Annexes 2, 3 and 4, confidential.

corresponding measures put in place pursuant to the F01977 Decision (“Registrar’s Letter”).⁶

4. On 11 December 2023, the Selimi Defence filed a request to the Panel for judicial review of the Registrar’s Letter (“First Request”).⁷

5. On 20 December 2023, the Panel denied Mr Selimi’s First Request, finding it invalid and premature (“First Decision”).⁸

6. On 8 January 2024, Mr Selimi submitted a complaint to the Registrar, seeking reconsideration of the manner in which the Registrar had implemented the F01977 Decision, as reflected in the Registrar’s Update and the Registrar’s Letter (“Request for Reconsideration”).⁹

7. On 22 January 2024, the Registrar issued a decision denying Mr Selimi’s Request for Reconsideration (“Impugned Decision”).¹⁰

8. On 26 January 2024, the Registrar submitted a filing in which she requested guidance from the Panel regarding the implementation of the F01977 Decision in light of, *inter alia*, the apparent disclosure of confidential material during visits between Mr Selimi and others (“Registrar’s Notification and Request”).¹¹

⁶ F01989/A01, Registrar, *Annex 1 to Registry Update on Implementation Pursuant to Trial Panel II’s Further Decision on the Prosecution’s Urgent Request for Modification Conditions*, 7 December 2023, confidential.

⁷ F02002, Specialist Counsel, *Urgent Selimi Defence Request to the Trial Panel for an Order to the Registrar Regarding Implementation of Decision F01977*, 11 December 2023, confidential. A public redacted version was filed on 14 December 2023, F02002/RED.

⁸ F02028, Trial Panel, *Decision on Urgent Request for an Order to the Registrar Regarding Implementation of Decision F01977*, 20 December 2023.

⁹ F02160/A02, Registrar, *Annex 2 of Transmission of Rexhep Selimi’s Request for Judicial Review of Registrar’s Decision on Request for Reconsideration*, 1 March 2024, confidential and *ex parte*.

¹⁰ F02160/A03, Registrar, *Annex 3 of Transmission of Rexhep Selimi’s Request for Judicial Review of Registrar’s Decision on Request for Reconsideration*, 1 March 2024, confidential and *ex parte*. The Registrar provided Mr Selimi with an Albanian translation of the Impugned Decision on 30 January 2024 (*see* F02160/A04, Registrar, *Annex 4 of Transmission of Rexhep Selimi’s Request for Judicial Review of Registrar’s Decision on Request for Reconsideration*, 1 March 2024, confidential and *ex parte*).

¹¹ F02082, Registrar, *Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977*, 26 January 2024, confidential, with Annexes 1-10, confidential; *see also* F02108, Specialist Prosecutor, *Prosecution Request Relating to Registry Filing F02092*, 7 February 2024,

9. On 9 February 2024, the Panel issued its decision on the Registrar's Notification and Request ("Notification and Request Decision").¹²

10. On 29 February 2024, Mr Selimi submitted a request for judicial review of the Impugned Decision ("Request for Judicial Review").¹³

II. RELEVANT FINDINGS IN THE IMPUGNED DECISION

11. In the Impugned Decision, the Registrar denied Mr Selimi's Request for Reconsideration through which Mr Selimi sought to have the Registrar reconsider the manner in which she implemented the directives issued by the Panel in the F01977 Decision.¹⁴ In considering Mr Selimi's Request for Reconsideration, the Registrar relied upon her powers and discretion provided by the Law and the Rules,¹⁵ the directives provided by the Panel in the F01977 Decision,¹⁶ and the discretion she is granted regarding the implementation of the F01977 Decision.¹⁷

12. In making findings in the Impugned Decision, the Registrar found the challenged conditions to be necessary and reasonable under the circumstances, as they are based upon a careful management exercise and assessment by the Registrar and the Chief Detention Officer of what is required to effectively

confidential, with Annexes 1 and 2, confidential; F02109, Specialist Counsel, *Selimi Defence Response to "Registry 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 2024, confidential.*

¹² F02115, Trial Panel, *Decision on Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977*, 9 February 2024, confidential. A public redacted version was filed the same day, F02115/RED.

¹³ F02160/A01, Registrar, *Annex 1 of Transmission of Rexhep Selimi's Request for Judicial Review of Registrar's Decision on Request for Reconsideration*, 1 March 2024, confidential and *ex parte*. The Registrar transmitted Mr Selimi's Request for Judicial Review to the Panel on 1 March 2024 (*see* F02160, Registrar, *Transmission of Rexhep Selimi's Request for Judicial Review of Registrar's Decision on Request for Reconsideration*, 1 March 2024, confidential and *ex parte*, with Annexes 1-5, confidential and *ex parte*).

¹⁴ Impugned Decision, para. 1.

¹⁵ Impugned Decision, paras 8-11.

¹⁶ Impugned Decision, paras 14-15.

¹⁷ Impugned Decision, para. 16.

implement the F01977 Decision while ensuring good order, security, and safeguarding the rights of all detainees.¹⁸ The Registrar found that it is impossible to make the changes sought by Mr Selimi while also fully executing the Panel's orders and fulfilling her obligations under the Law and the Rules.¹⁹

III. SUBMISSIONS

13. The Selimi Defence asserts that the Registrar abused her discretion by imposing arbitrary restrictions on Mr Selimi's visits and communications.²⁰ The Selimi Defence claims that the limitations placed on Mr Selimi's visits and communications are neither necessary nor proportionate.²¹ In particular, the Selimi Defence focuses the Request for Judicial Review on three aspects of the Impugned Decision: (i) Flexibility over scheduling of authorised communications with close family members;²² (ii) Consolidation of all communications within a ten-day period;²³ and (iii) limitation of non-privileged visits to 40 minutes.²⁴

14. The Selimi Defence requests that the Panel order the Registrar to: (i) authorise Mr Selimi to make telephone calls to his wife and children at times of his own choosing, and without prior scheduling; (ii) schedule authorised in-person visits and communications on a weekly basis, with visits spread out over the whole month, as opposed to an allocated 10-day period; and (iii) increase the duration of non-privileged visits from 40 minutes to two hours per visit.²⁵

¹⁸ Impugned Decision, paras 17-23.

¹⁹ Impugned Decision, para. 23.

²⁰ Request for Judicial Review, para. 4.

²¹ Request for Judicial Review, para. 4.

²² Request for Judicial Review, paras 6-15.

²³ Request for Judicial Review, paras 16-20.

²⁴ Request for Judicial Review, paras 21-30.

²⁵ Request for Judicial Review, para. 5.

IV. APPLICABLE LAW

15. Pursuant to Article 3(2) of the Law, the Specialist Chambers shall adjudicate and function in accordance with the Constitution of the Republic of Kosovo (“Constitution”) and international human rights law, including the European Convention on Human Rights (“ECHR”). Article 8 of the ECHR protects the right to respect for one’s private and family life, home and correspondence.

16. Pursuant to Rules 56(6) and 116(4)(d), the Panel may rule on conditions of detention and related matters for the purpose of protecting witnesses or victims, confidential information or the integrity of the proceedings, and may impose necessary and proportionate restrictions on the communications of a detained person in order to protect those interests.²⁶

17. As already noted by the Panel, Parties and participants are under a legal obligation not to disclose to third parties any confidential documents or information linked to the proceedings.²⁷ In particular, a Party or participant, including the Accused, may not disclose the identity of a protected witness to any third party. Such disclosures can only be made in exceptional circumstances set out by the Pre-Trial Judge,²⁸ and even then, Parties and participants may not reveal that a protected witness is involved with the activities of the KSC/SPO or the nature of such involvement to third parties.²⁹ These restrictions apply in all circumstances, including in respect of the Accused when in detention.

18. Article 23 in combination with Articles 40(2), 40(6)(d) and (f) of the Law requires the Panel to adopt such measures as might be necessary and proportionate to protect

²⁶ See also F01977 Decision, para. 23.

²⁷ See Rule 82(6); see generally F01226/A01, Trial Panel, *Annex 1 to Order on Conduct of Proceedings*, 25 January 2023, para. 15; 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* (“Framework Decision on Handling Confidential Information”), 24 June 2022, para. 212(I)(a).

²⁸ Framework Decision on Handling Confidential Information, para. 212(I)(e).

²⁹ Framework Decision on Handling Confidential Information, para. 212(I)(f).

victims and witnesses and to guarantee that confidential information is not disclosed to unauthorised third parties.

19. Pursuant to Articles 1(1) and 8(2) of the Registry Practice Direction on Complaints, the Registrar may make initial written decisions concerning a detainee's conditions of detention, monitoring and other restrictions placed on visits and communications. A detainee may challenge the Registrar's initial written decision by requesting reconsideration by the Registrar.³⁰ Article 9(1) of the Registry Practice Direction on Complaints allows a detainee to seek judicial review by the Panel of a Registrar decision denying a request for reconsideration.³¹ Pursuant to Article 9(6) of the Registry Practice Direction on Complaints, the Panel's decision on judicial review shall be final.³²

20. The Registrar has the authority under Articles 34(12) and 41(9) of the Law, Rule 23(7), and the administrative instructions issued thereunder, to adopt any measures as are necessary and proportionate to ensure that confidential information in the possession of detainees and members of Defence teams present at the Detention Facilities, including information regarding the identity of protected witnesses, is not communicated to unauthorised third parties during visits at those facilities.³³

³⁰ Registry Practice Direction on Complaints, Art. 8(2).

³¹ Registry Practice Direction on Complaints, Art. 9(1).

³² Registry Practice Direction on Complaints, Art. 9(6).

³³ See also KSC-BD-09/Rev1, Registrar, *Registry Practice Direction on Visits and Communications* ("Registry Practice Direction on Visits and Communications"), 23 September 2020, Arts. 4(2) and 7; KSC-BD-08-Rev1, Registrar, *Registry Practice Direction: Rules on Detention* ("Rules of Detention"), 23 September 2020, Rules 1(3), 4, and 63; KSC-BD-33/Annex A, Registrar, *Annex A to Detention Management Unit Instruction: Visiting Procedures for Family Members and Other Personal Visitors* ("Annex A to DMU Instruction"), 23 September 2020, Section 6.

V. JURISDICTION OF THE PANEL TO REVIEW THE REGISTRAR'S DECISION

21. The Panel has recently addressed the matter of its jurisdiction to review decisions of the Registrar in this context.³⁴ The primary responsibility over the management of the Detention Facilities is with the Registrar.³⁵ As part of her management responsibilities, the Registrar is tasked with adopting rules of detention and procedures by which complaints on matters of detention shall be addressed.³⁶ Pursuant to this responsibility, the Registrar has enacted the Rules of Detention, and the Registry Practice Direction on Complaints.³⁷ The Registrar has also established a procedure by which a detainee can challenge a decision of the Registrar regarding conditions of detention.³⁸

22. The Registrar's primary responsibility over the management of the Detention Facilities is subject to oversight by the Panel. The Trial Panel is responsible for the protection of confidential information,³⁹ as well as victims and witnesses.⁴⁰ The Panel is also responsible for guaranteeing the effective protection of the fundamental rights of the accused, including those relating to detention. As provided by the Rules, the Panel may, upon request, or *proprio motu*, rule on conditions of detention, and related matters, for the purposes of protecting witnesses or victims, confidential information or the integrity of the proceedings, including the imposition of necessary and proportionate restrictions on the communications of a detained person.⁴¹ The Specialist Chambers are also tasked

³⁴ See F02155, Trial Panel, *Decision on Rexhep Selimi's Request for Judicial Review of Registrar's Decision of 29 January 2024* ("First Decision on Judicial Review of Registrar Decisions"), 27 February 2024, confidential and *ex parte*, paras 18-20. A public redacted version was filed on the same day, F02155/RED.

³⁵ Law, Art. 41(7); Rule 23(7).

³⁶ Law, Art. 41(9); Rule 23(7).

³⁷ See also Rules of Detention, Rule 63 (noting that the additional Registrar's practice directions form an integral part of the Rules of Detention).

³⁸ Registry Practice Direction on Complaints, Art. 9.

³⁹ Law, Art. 40(d).

⁴⁰ Law, Art. 40(f).

⁴¹ Rules 56(6), 116(4)(d).

with judicial oversight of matters related to detention and the Detention Facilities.⁴² In its F01977 Decision, the Panel made it clear that the complaint procedures provided in the Registry Practice Directions on Complaints, including those associated with seeking judicial review by the Panel of a decision of the Registrar, shall continue to apply.⁴³

23. Mr Selimi has now requested judicial review of the Registrar's decision on reconsideration – that is, the Impugned Decision – made pursuant to Article 8(2) of the Registry Practice Directions on Complaints.⁴⁴ Based on the above, the Panel is satisfied that it is competent to conduct the review of the Impugned Decision sought by Mr Selimi.

VI. DISCUSSION

24. The Panel is seized with the review of Registrar's decision to deny reconsideration of three of the conditions it has placed on Mr Selimi's visits and communications, specifically the decisions: (i) to limit Mr Selimi's phone calls to one call per day on trial days and two calls per day on non-trial days, and to require that they be scheduled one month in advance;⁴⁵ (ii) to require that all of Mr Selimi's in-person private and non-privileged visits occur within a ten-day period each month;⁴⁶ and (iii) to limit the duration of non-privileged in-person visits to 40 minutes.⁴⁷

⁴² Law, Art. 41(7); Rule 23(7).

⁴³ F01977 Decision, para. 69 (*citing* Registry Practice Direction on Complaints, Art. 9).

⁴⁴ Request for Judicial Review, para. 1.

⁴⁵ Request for Judicial Review, para. 8.

⁴⁶ Request for Judicial Review, para. 16.

⁴⁷ Request for Judicial Review, para. 22.

A. STANDARD OF REVIEW

25. The Panel has recently outlined the standard of review that is to be used when engaging in judicial review of a decision of the Registrar on the conditions of detention.⁴⁸ In exercising its review, the Panel considers four main areas of inquiry, namely:

- (a) Did the Registrar act within the scope of her legal authority?
- (b) Did the Registrar take into account all relevant facts, give relevant facts their due weight and/or take into account irrelevant facts and circumstances?
- (c) Did the Registrar's actions violate fundamental principles of procedural fairness and natural justice, including the rights of other accused?
- (d) In the absence of an error under the first three factors above, is the Registrar's conclusion nonetheless unreasonable?⁴⁹

26. The Panel finds that this standard of review effectively protects and guarantees the Accused's fundamental rights and freedoms while ensuring that the proceedings remain fair.⁵⁰

B. WHETHER THE REGISTRAR ACTED WITHIN HER AUTHORITY

27. As noted above, the Registry has the authority to adopt necessary and proportionate measures to ensure that confidential information in the possession of detainees, including information regarding the identity of protected witnesses, is not communicated to unauthorised third parties.⁵¹

⁴⁸ See First Decision on Judicial Review of Registrar Decisions, paras 25-28.

⁴⁹ First Decision on Judicial Review of Registrar Decisions, para. 28.

⁵⁰ See Law, Arts. 2, 41(8); First Decision on Judicial Review of Registrar Decisions, para. 28.

⁵¹ See Registry Practice Direction on Visits and Communications, Arts. 4(2) and 7; Rules of Detention, Rules 1(3), 4, and 63; Annex A to DMU Instruction, Section 6.

28. In the F01977 Decision, the Panel ordered the Registry to engage in active monitoring of video visits and telephone communications when the Registrar, in the exercise of her discretion, finds it necessary to ensure the integrity of the proceedings, the protection of confidential information and/or to ensure compliance by Mr Selimi or those in contact with him regarding these measures.⁵²

29. Additionally, the Panel noted that “it has endowed the Registrar with broad discretion to regulate and implement [the F01977 Decision] in a manner consistent with the terms of the Decision, the rights of the Accused, and practical considerations relevant to the effective implementation of the Decision.”⁵³ Specifically, the Panel affirmed the Registrar’s discretion to “limit the number of [] visits or to limit the time for any such visit”⁵⁴ and to “limit the number of calls/videos and/or their duration”⁵⁵ in order to guarantee effective monitoring. That discretion, the Panel noted, extends *inter alia* to private visits and private communications of detainees, although the interests that are at stake in relation to such visits and communications call for a particular cautious approach on the part of the Registrar in the exercise of her discretion.⁵⁶

30. Pursuant to the Law, the Rules, and the Panel’s decisions, the Registrar has the authority to place limitations on Mr Selimi’s phone calls, and to place limitations on his visits and his communications, including their timing, quantity and duration. Therefore, the Panel finds that the Registrar acted within the scope of her legal authority when implementing the conditions currently challenged by Mr Selimi.

⁵² F01977 Decision, para. 66.

⁵³ First Decision, para. 19.

⁵⁴ F01977 Decision, para. 57.

⁵⁵ F01977 Decision, para. 67.

⁵⁶ F01977 Decision, para. 57.

C. WHETHER THE REGISTRAR CONSIDERED THE APPROPRIATE FACTUAL CIRCUMSTANCES, WHETHER SHE CONSIDERED IRRELEVANT FACTORS, AND/OR GAVE UNDUE WEIGHT TO CERTAIN FACTORS

31. In the Impugned Decision, the Registrar articulates the specific factors and circumstances she considered when implementing the conditions currently being challenged by Mr Selimi.⁵⁷ These include:

(i) the system of prior approval of non-privileged visits and telephone calls by the Registrar, as required by [the F01977 Decision]; (ii) the effective management of available means and resources to implement the specific conditions and limitations in [the F01977 Decision]; (iii) the daily schedule of the Detention Facilities, including the court schedule, other Detainees' schedules and activities, the scheduling of privileged visits, and any medical appointments; (iv) the overriding requirement to safeguard the rights of all Detainees while in detention, including the requirement that *all* Detainees are provided with reasonable means of maintaining personal relationships and have an adequate opportunity to be visited by and to communicate with Counsel; and (v) the preservation of good order and security in the Detention Facilities as a whole.⁵⁸

32. The Registrar also documents the complicated and resource-heavy steps and preparations she must take in order to comply with the F01977 Decision regarding visits and communications that form the basis for Mr Selimi's challenges.⁵⁹ These include, *inter alia*, contending with the limited means and resources of the Detention Management Unit,⁶⁰ engaging in screenings, tracking documentation, arranging consultations,⁶¹ navigating the calendars of detainees and the Court,⁶²

⁵⁷ Impugned Decision, para. 19.

⁵⁸ Impugned Decision, para. 19 (*citing* Registry Practice Direction on Visits and Communications, art. 6(2) which provides "[w]ith due regard to the ordinary and reasonable requirements of detention, the Chief Detention Officer may place reasonable restrictions on visits and communications, including limits on timing, quantity, and duration of visits and communications, based on the daily schedule of the Detention Facilities and the availability of staff and facilities or equipment").

⁵⁹ See Impugned Decision, paras 20-21, 27-28, 39-40, 45, 48; see generally Registrar's Update.

⁶⁰ Impugned Decision, para. 18.

⁶¹ Impugned Decision, paras 20, 39.

⁶² Impugned Decision, paras 19, 21, 55.

operating within the technical limitations of the Telio system,⁶³ ensuring that visitors do not have the opportunity to interact with each other,⁶⁴ shifting resources to accommodate an increase in the number of detainees within the Detention Facilities,⁶⁵ and the limited availability of language staff.⁶⁶ Additionally, these circumstances must be navigated while ensuring the rights of all detainees and while maintaining the security of the facility.

33. The Panel notes that detainee 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”.⁶⁷ As regards necessity, the Panel has already found that, prior to the F01977 Decision, conditions of detention were insufficient to mitigate the risk of Mr Selimi, *inter alia*, engaging in conduct that could interfere with the proceedings and/or present a risk to the safety and security of witnesses.⁶⁸ Based upon these findings, the Panel required the Registrar to place additional restrictions on the visits and communications of the Accused.⁶⁹ The risks demonstrated by Mr Selimi’s conduct, the orders of this Panel requiring additional restrictions, and the pre-existing duties of the Registrar pursuant to the Law and the Rules provided a reasonable basis for the Registrar to impose measures.

34. Regarding Mr Selimi’s challenge to the reduced “flexibility” in the Impugned Decision over scheduling authorised communications with close family members, the Panel finds that there is no indication that the Registrar is in a position to fulfill her duties, in particular in respect of monitoring, in a manner that is more “flexible” (as requested by the Selimi Defence) or that she arbitrarily refrained

⁶³ Impugned Decision, para. 27.

⁶⁴ Impugned Decision, paras 32-33.

⁶⁵ Impugned Decision, para. 34.

⁶⁶ Impugned Decision, paras 37, 45.

⁶⁷ F01977 Decision, para. 30.

⁶⁸ F01977 Decision, para. 41.

⁶⁹ F01977 Decision, paras 51-53, 55-60, 62-78, 84(c).

from adopting such a system. The fact that Mr Selimi was unable to use his 15 allotted minutes due to technical issues is unfortunate but hardly a demonstration of arbitrariness.

35. Considering, however, the effect that such technical issues could have on the protection of the rights of the Accused, the Panel enquired with the Registrar regarding the feasibility of crediting and rescheduling detainee calls which may have been missed or cut short due to technical issues.⁷⁰ The Registrar has indicated that such occurrences are rare. The Selimi Defence complains in particular about a call that failed to connect on 25 December 2023.⁷¹ Since that time, Mr Selimi has experienced only one other event when a call was not able to go through.⁷² As part of the protocols which the Registrar has in place, in the eventuality of a perceived technical issue occurring, a detention officer will attempt to place the call again during the allotted time.⁷³ However, connectivity or technical difficulties may result in the call being shortened or terminated.⁷⁴ The requirement that a detention officer be available to place and manage the call while also satisfying the other responsibilities of his or her shift, in addition to the constraints on the means and resources of the Detention Management Unit (“DMU”) preclude the Registry from rescheduling calls that have been missed due to technical difficulties.⁷⁵ The Panel finds that the Registrar’s decision and protocols are appropriate and adequate to fulfil its responsibilities and provide an effective vehicle to guarantee the fundamental rights of the Accused. The Panel considers, however, that in light of the importance of family contacts, the Registrar should endeavour, where possible, to reschedule or grant a further opportunity to an Accused whose

⁷⁰ See CRSPD448 20240305 Email from Trial Panel II to CMU regarding F02160.

⁷¹ See CRSPD448 20240313_1558 Email from Registrar to CMU re F2160.

⁷² See CRSPD448 20240313_1558 Email from Registrar to CMU re F2160.

⁷³ See CRSPD448 20240313_1558 Email from Registrar to CMU re F2160 (*quoting* Registrar’s Letter, p. 8).

⁷⁴ See CRSPD448 20240313_1558 Email from Registrar to CMU re F2160 (*quoting* Registrar’s Letter, p. 8).

⁷⁵ See CRSPD448 20240313_1558 Email from Registrar to CMU re F2160.

contacts with close family members – in particular, wife and children – has been interrupted or cut short for technical reasons.

36. Regarding the Selimi Defence's challenge to the aspect of the Impugned Decision that consolidates all communications within a ten-day period, the Panel notes that the complaint acknowledges the limitations based on the trial schedule that affect this matter. It does not, however, acknowledge the practical (including resources-issues) associated with it. The Panel observes that the Selimi Defence merely complains about the need for 'continuity' of contact. That complaint has no merit. The Panel recalls that there is no set right to have visits/communications spread over a particular period of time. Furthermore, the schedule, as it currently stands, enables Mr Selimi to have regular contacts with his family, without any significant period of time without such contacts. The Panel also recalls that the safeguards of which Mr Selimi complains were rendered necessary by his own conduct. Those safeguards are intended to ensure that such conduct do not reoccur.

37. Finally, regarding the Selimi Defence's challenge to the aspect of the Impugned Decision limiting non-privileged visits to 40 minutes, in the view of the Panel there is no demonstration of arbitrariness in the arrangement that was adopted by the Registrar and which allows a detainees to have a total of 200 minutes of non-privileged visits (i.e., a total of 3 hours and 20 minutes) per month. The fact that the Accused would wish for more is no ground for review. The restrictions put in place by the Registrar accounts, in particular, for the monitoring needs and limitations placed upon the Registrar, which must monitor those in respect of three detainees, i.e., for a total of 10 hrs/month.⁷⁶ The fact that there are other hours in the day to have such visits is no demonstration of the unreasonableness or arbitrariness of the Registrar's decision. The Detention Facilities are not a visiting center, and the measures imposed are expected to be

⁷⁶ See Impugned Decision, para. 47, for other considerations.

‘effective’ at preventing the recurrence of improper conduct in which Mr Selimi engaged (i.e., the sharing of sensitive, confidential, information to non-privileged third parties). Such measures must also be commensurate to the interests which these measures seek to protect and guarantee.

38. Mr Selimi complains that 40 minute in-person visits are unreasonable for long distance visitors.⁷⁷ The Registrar submits that such visitors can attend 40-minute visits on consecutive days within the 10-day period.⁷⁸ This enables long distance visitors to have substantial time with the detainee over a handful of days. The Registrar has also noted that it is not operationally feasible to accommodate consecutive 40 minute in-person sessions with the same visitor because active monitoring requires that language assistants receive, at a minimum, a period of rest every 40 minutes.⁷⁹ Longer sessions cannot be absorbed within the means and resources of the DMU.⁸⁰

39. Thus, the Panel finds that the conditions set forth by the Registrar and challenged by Mr Selimi are not arbitrary.⁸¹ They demonstrate the Registrar’s recognition and consideration of factual and legal circumstances with which she must contend, including specific needs and limitations associated with fulfilling her obligations under the Law and the Rules, the rights of the Accused, and the requirements placed upon her by the Panel in the F01977 Decision. At the same time, the Panel will direct the Registrar to explore the possibility of an Accused requesting successive 40 minutes meetings with a break being taken in-between two 40-minutes sessions to afford the DMU staff time to rest. Such an arrangement,

⁷⁷ Request for Judicial Review, para 25.

⁷⁸ See CRSPD448 20240313_1558 Email from Registrar to CMU re F2160.

⁷⁹ See CRSPD448 20240313_1558 Email from Registrar to CMU re F2160.

⁸⁰ See CRSPD448 20240313_1558 Email from Registrar to CMU re F2160.

⁸¹ Request for Judicial Review, para. 4.

if practically feasible, would ensure that any inconvenience to those concerned and expenses associated therewith are not unnecessarily onerous.

40. As regards proportionality, the Panel considers that the test involves an assessment of whether the restriction placed upon the detainee is proportionate to the legitimate aim being pursued.⁸² Here, the Panel finds that the Registrar has not implemented unreasonably intrusive restrictions under the circumstances. A number of legitimate aims must factor into this assessment, including: (i) her duty to comply with the Law, the Rules and orders of the Panel; (ii) necessity of maintaining operations despite limited means and resources; (iii) navigating schedules, including those of the Court and the Accused; (iv) the need to safeguard the rights of all detainees; and (v) matters of security. In light of these factors, the Registrar has concluded that she cannot make the changes sought by Mr Selimi and still meet her obligations.⁸³ The Registrar is in the best position to assess the feasibility of modifying conditions of detention while maintaining the necessary level of compliance regarding her other obligations, as demonstrated by the details provided.⁸⁴ The Registrar's conclusion that the restrictions placed upon Mr Selimi are proportionate to the legitimate aims which must be considered, is reasonable.

41. The Panel finds that Registrar has considered the appropriate factors and given them appropriate weight. Therefore, the Panel finds no reason to conclude that the Registrar inappropriately weighed relevant facts and circumstances or considered irrelevant matters in her decisions on the challenged conditions, or that she erred or abused her discretion when assessing the necessity and proportionality of these measures.

⁸² See F01977 Decision, para. 46 (citing ECtHR, *Khoroshenko v. Russia* [GC], no. 41418/04, [Judgment](#) ("*Khoroshenko v. Russia*"), 30 June 2015, para. 118).

⁸³ Impugned Decision, para. 23.

⁸⁴ See Impugned Decision, paras 20-21, 27-28, 39-40, 45, 48; see generally Registrar's Update.

E. WHETHER THE REGISTRAR'S ACTIONS VIOLATED FUNDAMENTAL PRINCIPLES OF FAIRNESS, JUSTICE, OR THE ACCUSED'S RIGHTS

42. The Selimi Defence alleges that limiting Mr Selimi's phone calls to one call per day on trial days and two calls per day on non-trial days, and requiring that they be scheduled a month in advance, is in violation of his rights, and contrary to holdings of the European Court of Human Rights.⁸⁵ Mr Selimi further alleges that requiring all in-person private and non-privileged visits and Zoom calls to occur within a ten-day period each month disproportionately affects his continuity of contact with the outside world.⁸⁶ The Selimi Defence asserts that limiting non-privileged visits to 40 minutes is unfair.⁸⁷

43. The Selimi Defence cites to *Deltuva v. Lithuania*⁸⁸ and *Nusret Kaya and Others v. Turkey*⁸⁹ in support of its claim.⁹⁰ The Panel finds that reliance on these cases is misguided, as both cases are dissimilar to the present matter. In *Deltuva v. Lithuania*, the detainee's child was able to see her father one time in a nine-month period, and for months the child was not able to determine whether her father was still alive.⁹¹ Mr Selimi, on the other hand, has the opportunity to receive in-person visits from his family every month and he also has regular telephone contact with them. The Panel finds the limitations placed on Mr Selimi do not create the same challenges or limitations to maintaining connections between child and parent as those addressed in *Deltuva v. Lithuania*. Additionally, the European Court of Human Rights (ECtHR) acknowledged that certain circumstances may justify such restrictions, despite the

⁸⁵ See Request for Judicial Review, paras 13-15.

⁸⁶ Request for Judicial Review, para. 17.

⁸⁷ See Request for Judicial Review, paras 21-30.

⁸⁸ ECtHR, *Deltuva v. Lithuania*, no. 38144/20, [Judgment](#) ("*Deltuva v. Lithuania*"), 21 March 2023, para. 47.

⁸⁹ ECtHR, *Nusret Kaya and Others v. Turkey*, nos. 43750/06, 43752/06, 32054/08 et al., [Judgment](#) ("*Nusret Kaya and Others v. Turkey*"), 22 April 2014, paras 30-62.

⁹⁰ Request for Judicial Review, paras 13-14.

⁹¹ *Deltuva v. Lithuania*, para 9.

interference caused in child/parent relationships.⁹² The basis for the Court's finding that a violation of the detainee's rights had occurred was that the authorities did not adequately justify the condition.⁹³ In contrast, here, the Registrar has detailed the practical circumstances and limitations that preclude the Registrar from granting Mr Selimi's requests.⁹⁴ Furthermore, and unlike the *Deltuva* case, the limitations placed upon Mr Selimi's visitation rights are the consequences of acts directly attributable to him, which created a risk to the safety and well-being of those whose information he shared with non-privileged persons. Based on the above, the two cases are not comparable and the *Deltuva* decision does not provide support for the Selimi complaint.

44. In *Nusret Kaya and Others v. Turkey*, the Court found that the requirement that detainees speak in Turkish instead of Kurdish during phone conversations violated the rights of detainees.⁹⁵ The requirement created a practical bar to communication between family members because detainees and/or family members could only understand Kurdish and the authorities failed to put translation services in place.⁹⁶ In the present matter, nothing precludes Mr Selimi from having meaningful communications with family members in his own language. In *Nusret Kaya and Others v. Turkey*, the Court noted that particular security concerns could justify such conditions, but the authorities failed to establish a reasonable basis to conclude that the limitation was necessary.⁹⁷ As noted above, this is not the case in the present matter.⁹⁸

⁹² *Deltuva v. Lithuania*, para. 44 (citing *Enea v. Italy* [GC], no. 4912/01, [Judgment](#), 17 September 2009, para 126).

⁹³ *Deltuva v. Lithuania*, para. 44.

⁹⁴ See Impugned Decision, paras 20-21, 27-28, 39-40, 45, 48; see generally Registrar's Update.

⁹⁵ *Nusret Kaya and Others v. Turkey*, paras 61-62.

⁹⁶ *Nusret Kaya and Others v. Turkey*, paras 35, 59.

⁹⁷ *Nusret Kaya and Others v. Turkey*, para. 59.

⁹⁸ See above, fn. 83. See also Impugned Decision, paras 20-21, 27-28, 39-40, 45, 48; see generally Registrar's Update.

45. The Panel reiterates that the Accused, as a detained person, enjoys certain fundamental rights, including access to his family. These rights do not, however, entitle him to see and have access to his family whenever suits him or at his convenience. The Panel also reiterates that the restrictions on which the Selimi Defence complains were adopted in reaction to improper conduct attributable to him and with a view to ensuring that such conduct does not re-occur and to protect the rights and interests of those whose conduct were put at risk.

46. As it has done in the past, the Panel finds that many of the guarantees provided in the Registry's Practice Directions on detention go beyond what detainees are entitled to as a matter of fundamental rights.⁹⁹ This is the case, for instance, in respect of private visits and communications with close relatives. The Panel recalls, furthermore, that measures which limit or control a detainee's contacts with the outside world are not *per se* incompatible with the effective protection of the fundamental rights of detainees such as those provided by Article 8 of the ECHR.¹⁰⁰ Specifically, Article 8 of ECHR does not guarantee the right to make telephone calls, and in facilities where telephone calls are permitted as a matter of course, legitimate restrictions may be placed on their use without violating a detainee's rights.¹⁰¹ Furthermore, restrictions that interfere with a detainee's right to respect for his private and family life, his home, and his correspondence may be justified if they are "in accordance with the law", they pursue one or more of the legitimate aims listed in Article 8(2) and the measures are necessary and proportionate under the circumstances.¹⁰²

⁹⁹ F01977 Decision, para. 30; First Decision on Judicial Review of Registrar Decisions, para. 41.

¹⁰⁰ See F01977 Decision, para. 45 (citing [Khoroshenko v. Russia](#) [GC], para. 123; ECtHR, [Piechowicz v. Poland](#), no. 20071/07, [Judgment](#), 17 April 2012, para. 212.

¹⁰¹ See e.g. ECtHR, [A.B. v. The Netherlands](#), no. 37328/97, [Judgment](#), 29 January 2002, paras 92-93.

¹⁰² See F01977 Decision, para. 46 (noting national security, public safety, economic well-being, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others (Article 8(2) of the ECHR)).

47. The Panel notes the Registrar's assertion that she considered the "overriding requirement to safeguard the rights of all Detainees" when reviewing Mr Selimi's requests.¹⁰³ This reflects the Registrar's recognition that the effectiveness of the rights of the Accused must be guaranteed irrespective of how the other factors inform the Registrar's conclusion, which, in the Panel's view, is consistent with how the Registrar applied the appropriate factors in this matter. As noted above, the Registrar has sufficiently established that restrictions placed upon Mr Selimi's communications further legitimate aims, and are necessary and proportionate in the circumstances.¹⁰⁴ The Panel finds that the Registrar acted in a manner consistent with the effective protection of Mr Selimi's rights and did not violate the fundamental principles of natural justice and procedural fairness.

F. WHETHER THE REGISTRAR'S CONCLUSION IS OTHERWISE UNREASONABLE

48. The Registrar determined that the challenged measures described are necessary and proportionate under the circumstances¹⁰⁵ and that she was unable to make modifications sought by Mr Selimi while also fully executing the Panel's orders and fulfilling its obligations under the Law and the Rules.¹⁰⁶ The Panel has already determined that the Registrar acted within her authority, properly balanced relevant factual circumstances, and did not violate Mr Selimi's rights. The Panel further finds that the outcome of the Impugned Decision relevant here, i.e., that the Registrar shall continue: (i) to limit Mr Selimi's phone calls to one call per day on trial days and two calls per day on non-trial days, and to require that they be scheduled a month in advance;¹⁰⁷ (ii) to require that all of Mr Selimi's in-person private and non-privileged visits occur within a ten-day period each month;¹⁰⁸ and (iii) to limit the duration of

¹⁰³ Impugned Decision, para. 19 (emphasis added).

¹⁰⁴ See above, paras 39-41.

¹⁰⁵ Impugned Decision, para 58.

¹⁰⁶ Impugned Decision, para. 23.

¹⁰⁷ Impugned Decision, para. 29.

¹⁰⁸ Impugned Decision, para. 43.

non-privileged in-person visits to 40 minutes,¹⁰⁹ is not unreasonable under the circumstances.

G. CONCLUSION

49. While Mr Selimi alleges that the challenged conditions are arbitrary, the Panel's review of the circumstances and responsibilities with which the Registrar must contend and which she must factor into her assessment proves otherwise. The Panel finds that the Registrar's conclusion that it is impossible to make the changes sought by Mr Selimi while also fully executing the Panel's orders and fulfilling her obligations under the Law and the Rules is reasonable.¹¹⁰

50. In implementing the challenged conditions of detention, the Panel finds that the Registrar acted within the authority and discretion provided by the Law, the Rules, and the Decisions of this Panel. The Panel finds that the Registrar did not abuse her discretion in this matter, and that the measures are and remain both necessary and proportionate in the circumstances. The measures are also consistent with the effective protection of the rights of those concerned and they do not violate the fundamental principles of natural justice and procedural fairness. Further, they are not otherwise unreasonable.

51. Finally, considering the importance of contacts with close family members, in particular children, the Panel will keep the impugned measures under close review in order to determine whether, in light of all relevant circumstances, greater allowance can be made for calls to close relatives, in particular any of the Accused's children.

¹⁰⁹ Impugned Decision, para. 49.

¹¹⁰ Impugned Decision, para. 23.

VII. CLASSIFICATION

52. The Panel notes that the Mr Selimi's Request for Judicial Review,¹¹¹ as well as the core filing of the Registrar's Transmission of Request for Judicial Review¹¹² and the accompanying Impugned Decision of the Registrar¹¹³ were filed as *confidential and ex parte*. The Panel therefore orders the Selimi Defence and Registry to submit public redacted versions of their respective filings or a request for their former filings to be reclassified as public by no later than Friday, 12 April 2024.

VIII. DISPOSITION

53. For the above-mentioned reasons, the Panel hereby:

- (a) **REJECTS** the Selimi Defence's Request for Judicial Review;
- (b) **ORDERS** the Registrar to explore the possibility of successive 40-minute sessions for single visitors and to report to the Panel on the feasibility of such arrangement no later than Friday, 12 April 2024; and
- (c) **DIRECTS** the Registrar to ensure that, where a call authorised by the Registrar is cut short or made impossible due to technical reasons unrelated to the conduct of the Accused, reasonable efforts are made within the limits of available resources to reschedule the call at the earliest opportunity; and
- (d) **ORDERS** the Selimi Defence and the Registry to submit public redacted versions of their respective filings or a request for their former filings to

¹¹¹ See above, fn. 13.

¹¹² F02160, Registrar, *Transmission of Rexhep Selimi's Request for Judicial Review of Registrar's Decision on Request for Reconsideration*, 1 March 2024, confidential and *ex parte*, with Annexes 1-5, confidential and *ex parte*.

¹¹³ See above, fn. 10.

be reclassified as public by Friday, 12 April 2024.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line under the name.

Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 22 March 2024

At The Hague, the Netherlands.