



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Filing Participant: Specialist Prosecutor's Office

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Prosecution submission pertaining to periodic detention review of Rexhep Selimi

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of the Accused Rexhep Selimi ('Selimi'). The Pre-Trial Judge, the Court of Appeals, and this Panel have repeatedly held that Selimi's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chambers' ('KSC') detention facilities would be sufficient to mitigate the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent determination of this Panel on 13 March 2025,³ there has been no change in circumstances that merits deviating from that determination. Indeed, the continued progression of trial and related developments further buttress the necessity and reasonableness of detention.

2. To the extent the present filing overlaps with matters raised in Selimi's separate request for provisional release,⁴ detention should also be maintained for the reasons set out in the SPO's response opposing that request.⁵

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F03008, 13 March 2025 ('Twentieth Detention Decision').

⁴ Selimi Defence Request for Provisional Release with Confidential Annexes 1-2, KSC-BC-2020-06/F03078, 3 April 2025 ('Selimi Request').

⁵ Consolidated Prosecution response to Veseli, Selimi, and Krasniqi provision release requests (F03076, F03078, F03086) with public annex 1, KSC-BC-2020-06/F03112, 14 April 2025 ('Consolidated Response').

II. PROCEDURAL HISTORY

3. As noted by the Panel, the relevant procedural history regarding Selimi's detention has been set out extensively in previous decisions.⁶

4. On 3 April 2023, the trial commenced.⁷

5. On 27 March 2025, testimony of the one-hundred-twenty-fifth (125th) witness concluded.

6. On 15 April 2025, the SPO filed its notice of the closing of its case pursuant to Rule 129.⁸

III. SUBMISSIONS

7. The relevant applicable law is set out in Article 41, and Rules 56 and 57, and has been laid out extensively in earlier decisions.⁹

8. Since the most recent detention decision, there have been no new facts or circumstances that diminish the factors supporting the need and reasonableness of detention. To the contrary, the end of the presentation of the SPO's case, increases the risk of obstruction and commission of further crimes, and warrant the Panel's reconsideration of the existence of the risk of flight.

⁶ Twentieth Detention Decision, KSC-BC-2020-06/F03008, paras 1-3.

⁷ Transcript (Opening Statements), 3 April 2023.

⁸ Prosecution notice pursuant to Rule 129, KSC-BC-2020-06/F03121, 15 April 2025.

⁹ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.5.

A. GROUNDED SUSPICION

9. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.¹⁰ There remains a grounded suspicion that Selimi has done so.¹¹ The Confirmation Decision determined that there is a suspicion that Selimi is liable for crimes against humanity and war crimes as identified in Articles 13, 14, and 16,¹² to a standard that exceeds the 'grounded suspicion' required for detention.¹³ The Pre-Trial Judge later also confirmed amendments to the Indictment that added further, similar charges against Selimi.¹⁴ It has been repeatedly confirmed that there remains a well-grounded suspicion that Selimi has committed crimes within the KSC's jurisdiction.¹⁵ Nothing has occurred since the confirmation decisions that would detract from this determination. Indeed, the well-grounded suspicion has increased with the evidence of all SPO witnesses are now included in the trial record.

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

10. The Court of Appeals has been clear that, once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article 41(6)(b) is sufficient to support detention.¹⁶ The three grounds under Article 41(6)(b) justifying detention are: (i) risk of flight; (ii) potential obstruction; and (iii) risk of additional

¹⁰ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.7.

¹¹ See Article 41(6)(a); Twentieth Detention Decision, KSC-BC-2020-06/F03008, paras 9-10.

¹² Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/RED, 26 October 2020, para.521(a).

¹³ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.9.

¹⁴ Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00777/RED, 22 April 2022, para.185; see also Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.9.

¹⁵ See, e.g., Twentieth Detention Decision, KSC-BC-2020-06/F03008, paras 9-10.

¹⁶ See *Prosecutor v. Gucati and Haradinaj*, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.49.

crimes.¹⁷ The applicable standard is articulable grounds that support a 'belief' that there is a risk of one of the Article 41(6)(b) grounds occurring.¹⁸ The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence'.¹⁹ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²⁰ The Panel has noted that 'articulable' in this context means specified in detail by reference to the relevant information or evidence.²¹ In considering whether an accused should be detained or released, the relevant panel must consider whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.²²

i. Risk of Flight (Article 41(6)(b)(i))

11. Selimi is aware of the serious confirmed charges against him, the possible lengthy prison sentence that may result therefrom, and now has full knowledge of the evidence in relation to those crimes.²³ The possible imposition of such a sentence becomes more concrete with the expeditious progression of trial and the conclusion of the presentation of the SPO's case. Selimi is also aware of the evidence of conduct that has necessitated

¹⁷ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.11.

¹⁸ Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005, 30 April 2021 ('First Appeals Decision'), paras 24-32.

¹⁹ First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.25.

²⁰ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.11; First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.25; *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021 ('Haradinaj Decision'), para.28.

²¹ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.11 *citing* Article 19.1.31 of the Kosovo Criminal Procedure Code 2012, Law No. 08/L-032 defining 'articulable' as: 'the party offering the information or evidence must specify in detail the information or evidence being relied upon'.

²² Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of the Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, KSC-CC-PR-2017-1/F00004, 26 April 2017, para.14.

²³ Decision on Rexhep Selimi's Application for Interim Release, KSC-BC-2020-06/F00179, 22 January 2021, para.31.

modification of his conditions of detention, which the Panel has acknowledged may undermine or undo its prior finding that he has cooperated with relevant authorities.²⁴ In addition, Selimi has the means and influence over a network of support necessary to abscond from the proceedings.²⁵ All of the above must be taken into consideration in relation to prior findings concerning Selimi's means to travel.²⁶ Therefore, the combination of all of these factors elevates Selimi's risk of flight to a 'sufficiently real possibility'.²⁷

ii. *Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))*

12. Selimi continues to present a risk of obstructing proceedings, consistent with this Panel's recent conclusions.²⁸ The conclusion of the SPO case does not obviate this risk, and witnesses can remain at risk of obstruction even after their testimony.²⁹

²⁴ Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F02060, 15 January 2024, para.13.

²⁵ See Consolidated Response, KSC-BC-2020-06/F03112, 14 April 2025, para.12.

²⁶ See Public Redacted Version of Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F01111/RED, 18 November 2022, para.23.

²⁷ See e.g. First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.44.

²⁸ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.21.

²⁹ In this regard, taking harmful action against a person 'with the intent to retaliate for providing truthful information relating to the commission or possible commission of any criminal offense to police, an authorized investigator, a prosecutor or a judge' is a punishable offence under Article 15(2) of the Law, as read with Article 388 of the 2019 Kosovo Criminal Code (renumbered from Article 396 of the 2012 Kosovo Criminal Code). For examples of such conduct from international courts, at the Special Court for Sierra Leone, five witnesses were subject to unlawful interference from a purported representative of the defence team, after the parties closed their cases and prior to delivery of a trial judgment, to induce them to recant their testimony against Charles Taylor. SCSL, *Independent Counsel v. Eric Koi Senessie*, SCSL-2011-01-T, Judgment in Contempt Proceedings, 16 August 2012. Similarly, and over a sustained period between 2015-2018 following a final appeal judgment against Mr Augustin Ndirabatswe, the accused and a group of his associates engaged in a highly organised scheme intended to manipulate and improperly influence five witnesses heard by the International Criminal Tribunal for Rwanda with the end goal of procuring recantations of their prior testimony. IRMCT, *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-T, Judgment, 25 June 2021. Similarly, in the SCSL case of *Bangura et al.*, two convicted persons and two of their associates engaged in an initiative to procure the recantation of witness testimony by way of a monetary bribe, with the aim of providing an avenue to seek review (See, SCSL, *Independent Counsel v. Bangura et al.*, SCSL-2011-

13. The Panel reiterated its previous determination that: (i) Selimi's past and present positions of influence in Kosovo, including as Minister of Internal Affairs and having been elected to the Kosovo Assembly, would enable him to influence and mobilise his support network; (ii) there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members; and (iii) the proceedings continue to advance and Selimi continues to gain insight into the evidence underpinning the serious charges against him.³⁰

14. This persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members has been recognised by the Court of Appeals as a relevant 'contextual consideration'.³¹ Similar findings were made in the *Mustafa* Trial Judgment³² and the *Gucati and Haradinaj* Appeal Judgment.³³ The Trial Panel in *Gucati and Haradinaj* considered that 'witness protection has continued to be a live and critical issue in Kosovo',³⁴ and credited the testimony of defence expert Robert Reid, who remarked that, in over 20 years in the field, he had never seen witness intimidation on the level that exists in Kosovo.³⁵ This climate of witness intimidation continues to persist,

02-T, Judgment in Contempt Proceedings, 25 September 2012). In a recent IRMCT review proceeding, the Appeals Chamber found that financial transactions of Witness HH raised concerns as to the integrity of his purported recantation, such that Mr Ntakirutimana's original convictions were maintained (*See*, IRMCT, *Prosecutor v. Gérard Ntakirutimana*, MICT-12-17-R, Review Judgment, 22 November 2024, paras 57, 62).

³⁰ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.18.

³¹ Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, paras 41-48; Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

³² *Prosecutor v. Mustafa*, Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022, para.57.

³³ *Prosecutor v. Guçati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023, para.438 (quoting KSC-BC-2020-07, Transcript, 18 May 2022, pp.3858-3859).

³⁴ *Prosecutor v. Guçati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022 ('Case 7 Judgment'), para.579.

³⁵ Case 7 Judgment, KSC-BC-2020-07/F00611/RED, para.577.

as noted by the *Shala* Trial Panel³⁶ and as seen in media reports following testimony in public session.³⁷

15. Moreover, Selimi now is aware of the identity of all of the SPO witnesses and their evidence. The close of the SPO's case does not reduce the risk of obstruction, but increases it, as the Accused now have knowledge of the full scope of the case against them.³⁸ As noted by the Panel, the risk of interference for the purposes of attempting to secure recantations and/or indirectly dissuade future witnesses from testifying could obstruct the progress of the proceedings.³⁹ Further, there is a possibility that witnesses may need to be recalled, making them susceptible to interference attempts.⁴⁰

16. In this regard, the Panel has previously noted that the disclosure of such highly sensitive information to the Selimi Defence necessarily results in it becoming known to a broader range of persons, including the Accused.⁴¹ This continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence,⁴² which, in the context of the release of an Accused, would not be conducive to the effective protection of witnesses.⁴³

³⁶ See *Prosecutor v. Shala*, Summary of Trial Judgment, KSC-BC-2020-04, 16 July 2024, para.6.

³⁷ See Arberi, 'Denigrating graffiti for Fadil Geci are place in Pristina', 25 October 2024, accessed at www.koha.net/arberi/grafite-denigruse-per-fadil-gecin-vendosen-ne-prishtine.

³⁸ See *Decision on Review of Detention of Nasim Haradinaj*, KSC-BC-2020-07/F00507, 21 December 2021, Confidential, paras 33-38, 53-77.

³⁹ *Decision on Periodic Review of Detention of Jakup Krasniqi*, KSC-BC-2020-06/F02183, 15 March 2024, para.25.

⁴⁰ See *Decision on Periodic Review of Detention of Jakup Krasniqi*, KSC-BC-2020-06/F02183, 15 March 2024, para.25; *Decision on the Thirteenth Review of Detention of Pjetër Shala*, KSC-BC-2020-04/F00663, 20 September 2023, paras 17-18; *Decision on the Thirteenth Review of Detention of Pjetër Shala*, KSC-BC-2020-04/F00663, 20 September 2023, paras 17-18.

⁴¹ *Twentieth Detention Decision*, KSC-BC-2020-06/F03008, para.19.

⁴² See *Twentieth Detention Decision*, KSC-BC-2020-06/F03008, para.19.

⁴³ See *Twentieth Detention Decision*, KSC-BC-2020-06/F03008, para.19.

17. Indeed, this risk has already been realised, as this Panel has previously concluded that the standard conditions of detention were insufficient to mitigate the risk of Selimi and other Accused engaging in conduct that could interfere with the proceedings and/or present a risk to the safety and security of witnesses.⁴⁴ To address these risks, the Panel ordered significant modifications to detention conditions.⁴⁵ More specifically, the Panel recalled its finding that it appears that Selimi disclosed privileged information to unauthorised third parties, and that such conduct supports and reinforces the Panel's finding that the release of Selimi constitutes a risk of obstruction with the progress of KSC proceedings.⁴⁶ This finding is further evidenced by Detention Centre Transcripts which demonstrate that Selimi has abused his non-privileged visits to reveal the identity of protected SPO witnesses.⁴⁷

18. All of the above demonstrates that the risk of obstruction is not only well-founded, but that Selimi presents an extraordinarily heightened risk of obstructing KSC proceedings to such an extent that even the standard communications restrictions and monitoring of the Detention Centre are insufficient to mitigate.

⁴⁴ 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 ('Modification Decision'), para.41.

⁴⁵ See Modification Decision, KSC-BC-2020-06/F01977, paras 51-53, 55-60, 62-78, 84(b).

⁴⁶ See Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.20

⁴⁷ See Annex 2 to Prosecution motion for admission of obstruction related materials with confidential Annexes 1-3, KSC-BC-2020-06/F03120/A02, 15 April 2025.

iii. Risk of Criminal Offences (Article 41(6)(b)(iii))

19. Selimi continues to present a risk of committing further crimes, consistent with this Panel's recent conclusions.⁴⁸

20. The Panel recalled its previous finding that the risk of Selimi committing further crimes continues to exist, opined that the same factors that were taken into account in relation to the risk of obstruction are relevant to the analysis of the risk of committing further crimes, and concluded that no new circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.⁴⁹

21. Moreover, the crimes against humanity and war crimes that Selimi is charged with are extremely serious, they are alleged to have been committed in cooperation with others, and the Confirmation Decision describes Selimi's personal participation in the commission of crimes.

22. This Panel's previous conclusion that the continuing disclosure of sensitive information presented an unacceptable risk for the commission of further crimes applies even more forcefully given the relevant findings regarding Selimi's revelation of confidential information to unauthorised third parties, and the conclusion of the SPO's case.⁵⁰ Indeed, the fact that Selimi now has specific insight into the overall case and evidence against him, furthers the risk that he may commit additional crimes, including

⁴⁸ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.24.

⁴⁹ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.23.

⁵⁰ See Prosecution motion for admission of obstruction related materials with confidential Annexes 1-3, KSC-BC-2020-06/F03120/A02, 15 April 2025.

against witnesses who have provided or could provide evidence in the case and/or appear before this Panel at future stages of the proceedings.⁵¹

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

23. The relevant risks can only be effectively managed at the KSC's detention facilities, as recently reaffirmed by this Panel.⁵²

24. Regarding the risks of obstructing the progress of KSC proceedings and committing further crimes, the Panel found that none of the formerly proposed conditions, nor any additional measures foreseen in Article 41(12) could sufficiently mitigate the existing risks.⁵³

25. Further, the Panel found that the measures in place at the KSC detention facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.⁵⁴ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁵⁵

26. The Panel has concluded that it is only through the communication monitoring framework applicable at the KSC detention facilities, including those measures recently

⁵¹ See e.g. *Decision on the Twelfth Review of Detention of Pjetër Shala*, KSC-BC-2020-04/F00596, 20 July 2023, para.25.

⁵² Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.29. See also Consolidated Reponse, KSC-BC-2020-06/F03112, 14 April 2025, paras.32-43.

⁵³ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.28.

⁵⁴ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.28.

⁵⁵ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.28.

ordered by the Panel, that Selimi's communications can be restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes.⁵⁶

27. Nothing has occurred since the previous determination warranting a different assessment on conditions, either generally or for a discrete period of time. Selimi's conduct represents such an extraordinarily heightened risk that even the standard communications restrictions and monitoring of the Detention Centre are insufficient to mitigate, having necessitated the imposition of an even more strict regime by this Panel. Therefore, especially in conjunction with the continuation of trial the underlying risks are higher than ever.

D. DETENTION REMAINS PROPORTIONAL

28. Detention remains proportional. At the last detention review, this Panel found that Selimi's detention for a further two months was necessary and reasonable in the specific circumstances of the case.⁵⁷

29. In that regard, the Panel recalled that the reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features, which, in this case, include: (i) that Selimi is charged with ten counts of serious international crimes in which he is alleged to play a significant role; (ii) that, if convicted, Selimi could face a lengthy sentence; (iii) the risks under Article 41(6)(b)(ii)-(iii) cannot be mitigated by any proposed conditions and/or any other conditions; (iv) the case against Selimi is complex; (v) the climate of witness intimidation; and (vi) the fact that the trial is ongoing.⁵⁸

⁵⁶ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.29.

⁵⁷ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.32.

⁵⁸ Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.31.

30. Here, taking these same, and additional, factors into consideration, Selimi's detention continues to be reasonable, especially in light of the continuing reasonable progression of proceedings.⁵⁹

IV. CONCLUSION

31. For the foregoing reasons, Selimi should remain detained.

Word count: 3,329



Kimberly P. West

Specialist Prosecutor

Wednesday, 16 April 2025

At The Hague, the Netherlands.

⁵⁹ In this regard, *see* Twentieth Detention Decision, KSC-BC-2020-06/F03008, para.32; Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F03106, 11 April 2025, paras 33-34; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F03107, 11 April 2025, paras 36-37.