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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 Guénaël Mettraux Judge Fergal Gaynor, Reserve Judge
Registrar:	Dr Fidelma Donlon
Filing Participant:	Counsel for Rexhep Selimi
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Public Redacted Version of Selimi Defence Reply to Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests

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I. INTRODUCTION

1. The Defence for Mr. Rexhep Selimi ("the Defence") hereby files its reply to the Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests[1] ("Response"). The Response is replete with alarmist predictions made without any concrete arguments that Mr. Selimi will engage in any of the described acts that the SPO presents as inevitable. In addition, the SPO invites the Trial Panel to revise the applicable legal standard concerning provisional release so as to render it impossible before the KSC. Furthermore, the SPO attempts to discredit the ability of the Kosovo Police to implement the proposed release conditions without adducing any technical expertise supporting its criticism and by assessing its technical capacity against an unattainable standard. For these reasons, the Response should be rejected and the Defence Request for provisional release[2] ("the Request") should be granted.

II. SUBMISSIONS

A. The SPO failed to establish the existence of an increased risk of flight

2. The Trial Panel repeatedly found that Mr. Selimi's detention is not justified on the basis of a risk of flight.[3] Similarly, the Pre-Trial Judge determined that the risk in question can be effectively addressed by the imposition of provisional release conditions.[4] The SPO nonetheless argues that the imminent Rule 130 litigation requires the Trial Panel to revisit these repeatedly reaffirmed findings.[5]

[1] KSC-BC-2020-06/F03112, Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests (F03076, F03078, and F03086) with public Annex 1, 14 April 2025.
[2] KSC-BC-2020 06/F03078, Selimi Defence Request for Provisional Release with Confidential Annexes 1-2, 3 April 2025.
[3] Request, para. 3, footnote 5.
[4] Request, para. 3, footnote 6.
[5] Response, para. 10.

3. First, the SPO's argument starts from the premise that the forthcoming Rule 130 motion will be unsuccessful. Therefore, the SPO is inviting the Trial Panel to pre-judge the forthcoming Rule 130 litigation by requiring an assessment at this stage that the SPO's evidence is capable of supporting a conviction. Alternatively, if the Trial Panel does not pre-judge this decision, the only way the Panel could accept the SPO's argument that Mr. Selimi is a flight risk is because *possibly* the evidence presented against him will be capable of supporting a conviction, which *possibly* increases his incentive to flee, which *possibly* will result in Mr. Selimi attempting to abscond. Therefore, the SPO's suggestion requires the Trial Panel to either prematurely decide on the Rule 130 litigation or to otherwise speculate extensively. In either scenario, the SPO's argument should be discarded.

4. Second, the SPO fails to explain how the denial of provisional release is the only avenue to address the alleged risk. While the Defence maintains that proposed conditions are sufficient to manage any identified risk, the Trial Panel may impose additional conditions. In particular, Mr. Selimi could be recalled shortly before the issuance of the Rule 130 decision. Therefore, the SPO's conclusion that it is only through continued detention that these (hypothetical) risks may be managed is conspicuously short-sighted.

5. Finally, the SPO's logic in claiming that "prior findings as to past cooperation with authorities are now diluted by the advanced stage of the trial"[6] is self-contradictory. The SPO argues that the Accused have the means to abscond based on the Pre-Trial Judge's[7] and the Trial Panel's[8] findings to that effect, which are predicated on their personal circumstances and positions held prior to

[6] Response, para. 11.
[7] KSC-BC-2020-06/F00580, Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep Selimi, 26 November 2021, para. 28.
[8] KSC-BC-2020-06/F03008, Decision on Periodic Review of Detention of Rexhep Selimi, 13 March 2025, para. 15.

their arrest. It is unexplained how the "advanced stage of the trial" would on the one hand dilute prior findings relevant to the Accused's cooperation with authorities, including during their arrest, but would leave those findings based on Mr. Selimi's alleged positions of authority before his arrest intact.

B. The SPO failed to establish that Detention is necessary to obviate the risk of obstruction

6. The SPO avers that obstruction may occur at any stage of trial[9], including during the Victims case[10] and the rebuttal stage,[11] and to encourage recantations.[12] However, the Response is devoid of any substantiation as to why Mr. Selimi, in particular, would engage in such acts.

7. First, the SPO cites to select cases before other tribunals where obstruction of witnesses, or the risk of it, has been established after the close of the Prosecution case.[13] Nonetheless, the Response makes no attempt to explain how the factual circumstances outlined in those cases, and the personal circumstances of the Accused concerned, are equally pervasive in the case of Mr. Selimi. Instead, the SPO submits that the Accused have in their possession sensitive information related to protected witnesses,[14] and that they request to be released in the same country where most Prosecution witnesses reside,[15] which are routine features of almost any international criminal trials. In essence, the SPO argues that the mere occurrence of post-Prosecution case obstruction incidents in the history of international criminal justice entails that all Accused before international

[9] Response, para. 22.
[10] Response, paras. 22, 26.
[11] Response, para. 26.
[12] Response, paras. 25, 26.
[13] Response, para. 21, footnotes 47-48.
[14] Response, para. 24.
[15] Response, para. 26.

criminal tribunals are predisposed to the very same risks, rendering provisional release nothing but illusory.

8. Second, the SPO consistently assumes throughout its Response that the Accused are necessarily predisposed to engage in malicious acts from which they would derive no actual benefit. The SPO assumes that Mr. Selimi will encourage the recantation of witnesses, despite the limited weight of recantations obtained through obstructive means which will be attributed by the Trial Panel. The SPO assumes that Mr. Selimi is prone to interfere with evidence on the harm suffered by victims, which implies that the Accused are oblivious to the Trial Panel's ability to properly weigh the credibility of testimony demonstrated to have been tampered with, and ignores that throughout the trial, upon Mr. Selimi's instructions, the Defence has rarely, if ever, challenged the detention of victims and the harm occasioned to them. The SPO assumes that the Accused are prone to disobeying the prospective release conditions, which implies that the Accused are ignorant of the consequences of doing so on their ability to be provisionally released again in the future. If the SPO submits that Mr. Selimi is bound to obstruct proceedings or commit further crimes, it is incumbent upon it to point to specific circumstances which demonstrate that he is partial to behaving in such a way. No such circumstances have been detailed anywhere throughout the Response.

9. Third, concerning the SPO's admonition as to the possible need to call rebuttal Prosecution witnesses,[16] it is unexplained how the Accused's provisional release would place such witnesses at risk when the identity of rebuttal witnesses, if any are to be called, is not known to the Accused, and will not be known at any point during the proposed period of provisional release. Furthermore, the Defence

[16] Response, para. 26.

recalls[17] that the Rules prescribe for several ways through which witnesses may be heard and evidence may be led even after the rebuttal stage, including at the sentencing,[18] appeal,[19] and Constitutional Court referral[20] stages. Therefore, the SPO's insinuation that continued detention should be maintained until such time as the possibility of calling further evidence no longer exists would equally render the right to seek provisional release nugatory and would be antithetical to the Accused's presumption of innocence and to the practice of international criminal tribunals to date.

10. Finally, should the Trial Panel determine the continued existence of a sufficiently real risk of obstruction of the Victims case witnesses, the SPO yet again fails to justify why continued detention is the only alternative. Nothing prevents the Trial Panel from recalling the Accused from provisional release shortly before Victims' Counsel is ordered to file its list of witnesses, or from ordering that the identity of those witnesses not be disclosed to the Defence until their return.

C. The SPO misconstrues the purpose of provisional release

11. The SPO claims that the renewed correspondence from the Kosovo Police does not establish that the risks of authorised disclosure can be effectively managed.[21] It does so by lamenting the alleged lack of information in the correspondence in question.[22]

[17] KSC-BC-2020-06/F02917, Selimi Defence Reply to 'Prosecution consolidated response to F02785 and F02846', 10 February 2025, para. 5.
[18] Rule 162(5).
[19] Rule 181.
[20] Rule 23 of the Rules of Procedure for the Specialist Chamber of the Constitutional Court.
[21] Response, para. 32.
[22] Response, paras. 33-34, 39.

12. First, regarding the purported technical shortcomings of the proposed release conditions, these are wholly unsubstantiated. The SPO does not point to any technical expertise supporting its claims regarding, for example, [REDACTED].[23]

13. Second, in effect, the SPO demands a full review of the Kosovo Police's technical and personnel capabilities. In that respect, the Defence notes the practice of other international tribunals, where provisional release was often granted on the basis of a sole declaration from the receiving State that it will implement any release conditions deemed suitable by the seized chamber.[24] Other international tribunals have consistently held that the Defence is not required to obtain guarantees from the receiving State for a provisional release application to succeed, and that the receipt of such guarantees is merely a factor to be taken into consideration.[25] Therefore, if the SPO challenges the capacity and/or willingness of the Kosovo Police to implement suitable release conditions, it falls upon it to bring specific factual evidence and technical expertise supporting such a challenge, rather than simply shifting the burden to the Defence to disprove unsubstantiated allegations.

14. Third, the SPO's arguments relating to the renewed correspondence from the Kosovo Police revolve around their alleged inability to replicate, or act as a substitute for, the measures in place at the KSC detention facilities.[26] However, provisional release will never be able to replicate the entire panoply of measures that may be imposed in a detention facility, and requiring such replication would

[23] Response, para. 37.
[24] ICTY, *Prosecutor v. Lazarević*, IT-03-70-PT, Decision on Defence Request for Provisional Release, 14 April 2005; *Prosecutor v. Pandurević and Trbić*, IT-05-86-PT, Decision on Vinko Pandurević's Application for Provisional Release, 15 July 2005; *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Decision on Momčilo Persišić's Motion for Provisional Release, 9 June 2005.
[25] ICC, *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08, Decision on the Interim Release of Jean-Pierre Bemba Gombo […], 14 August 2009, para. 88; ICTY, *Prosecutor v. Stanisić and Simatović*, IT-03-69-PT, Decision on Provisional Release, 26 May 2008, para. 39; *Prosecutor v Prlić et al*, IT-04-74-PT, Order on Provisional Release of Jadranko Prlić, 30 July 2004, para. 31.
[26] Response, paras. 40-41.

equally render provisional release impossible. The issue is whether the release conditions can adequately mitigate the diminished risks, if any, that may continue to exist after the closure of the SPO's case. By instead criticizing their inability to emulate the conditions at the DU, the SPO provides no arguments on why these conditions are incapable of mitigating these specific risks.

15. Finally, the SPO's claims that the Accused's abidance by the terms of detention are not relevant for assessing their eligibility for interim release are equally self-contradictory.[27] The SPO avers that the Accused's conduct in the Detention Centre has no correlation with the existence of the Article 41(6)(b) risks, while also claiming that their alleged conduct in the Detention Centre which gave rise to the modification of the detention conditions actually exacerbates these risks.[28] These irreconcilable arguments should accordingly be discarded.

III. CLASSIFICATION

16. These submissions are filed confidentially pursuant to Rule 82(4). A public redacted version will be submitted in due course.

IV. CONCLUSION AND RELIEF REQUESTED

17. For the foregoing reasons, the Defence respectfully requests the Trial Panel to REJECT the Response and GRANT the Request.

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Respectfully submitted on 22 April 2025,

[27] Response, paras. 42-43.
[28] Response, paras. 25, 27.

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