



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** **KSC-BC-2020-06/IA042**

**Before:** **A Panel of the Court of Appeals Chamber**  
Judge Michèle Picard  
Judge Kai Ambos  
Judge Nina Jørgensen

**Registrar:** Fidelma Donlon

**Date:** 28 May 2026

**Original language:** English

**Classification:** **Public**

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**Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision  
on Periodic Review of Detention**

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**Counsel for Victims:**  
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**Counsel for Kadri Veseli:**  
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**THE PANEL OF THE COURT OF APPEALS CHAMBER** of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),<sup>1</sup> acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal filed on 26 March 2026 by Mr Rexhep Selimi (“Appeal” and “Selimi”, “Accused” or “Defence”, respectively),<sup>2</sup> against the “Decision on Periodic Review of Detention of Rexhep Selimi” (“Impugned Decision”).<sup>3</sup> The Specialist Prosecutor’s Office (“SPO”) responded on 8 April 2026 that the Appeal should be rejected (“Response”).<sup>4</sup> Selimi replied on 14 April 2026 (“Reply”).<sup>5</sup>

## I. BACKGROUND

1. On 5 November 2020, Selimi was arrested and transferred to the Detention Facilities of the Specialist Chambers (“Detention Facilities”) pursuant to an arrest

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<sup>1</sup> IA042/F00002, Decision Assigning a Court of Appeals Panel, 30 March 2026 (strictly confidential, reclassified as public on 11 May 2026).

<sup>2</sup> IA042/F00001, Selimi Defence Appeal against Decision on Periodic Review of Detention of Rexhep Selimi (F03699), 26 March 2026 (strictly confidential) (“Appeal”).

<sup>3</sup> F03699/RED, Public Redacted Version of Decision on Periodic Review of Detention of Rexhep Selimi, 17 April 2026 (confidential version filed on 16 March 2026) (“Impugned Decision”).

<sup>4</sup> IA042/F00003, Prosecution response to ‘Selimi Defence Appeal against Decision on Periodic Review of Detention of Rexhep Selimi (F03699)’, 8 April 2026 (strictly confidential) (“Response”), paras 2, 37-38, 40.

<sup>5</sup> IA042/F00004, Selimi Defence Reply to Prosecution response to ‘Selimi Defence Appeal against Decision on Periodic Review of Detention of Rexhep Selimi (F03699)’, 14 April 2026 (strictly confidential) (“Reply”).

warrant issued by the Pre-Trial Judge,<sup>6</sup> further to the confirmation of an indictment against him.<sup>7</sup>

2. On 22 January 2021, the Pre-Trial Judge rejected Selimi's first application for interim release ("First Detention Decision").<sup>8</sup> On 30 April 2021, the Court of Appeals Panel upheld the First Detention Decision.<sup>9</sup>

3. The Pre-Trial Judge, and then the Trial Panel, have subsequently reviewed and extended Selimi's detention on a bi-monthly basis until the current stage. Some of these decisions were appealed and upheld by the Court of Appeals Chamber.<sup>10</sup>

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<sup>6</sup> F00049, Notification of Arrest of Rexhep Selimi Pursuant to Rule 55(4), 5 November 2020 (strictly confidential and *ex parte*, reclassified as public on 20 November 2020); F00027/RED, Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, 26 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020, reclassified as confidential on 25 November 2020); F00027/A05/RED, Public Redacted Version of Arrest Warrant for Rexhep Selimi, 5 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020).

<sup>7</sup> F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 30 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020, confidential redacted version filed on 19 November 2020, confidential lesser redacted version filed on 21 September 2023, confidential further lesser redacted version filed on 5 June 2025). The operative indictment was filed on 30 September 2022. See F00999/A03, Annex 3 to Submission of confirmed amended Indictment, 30 September 2022 (the strictly confidential and *ex parte* version thereof was filed on 30 September 2022 and reclassified as confidential on 26 January 2023. See F00999/A01). A public lesser redacted version was filed on 27 February 2023. See F01323/A01, Annex 1 to Prosecution further submissions pursuant to Decision F01229, 27 February 2023 (confidential, reclassified as public on 27 February 2023).

<sup>8</sup> F00179/RED, Public Redacted Version of Decision on Rexhep Selimi's Application for Interim Release, 26 January 2021 (confidential version filed on 22 January 2021) ("First Detention Decision"); F00124/RED, Public Redacted Version of Defence Application for Interim Release, KSC-BC-2020-06/F00124, dated 7 December 2020, 12 December 2020 (confidential version filed on 7 December 2020) ("First Application for Interim Release").

<sup>9</sup> IA003/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021) ("First Appeal Decision on Detention").

<sup>10</sup> See First Appeal Decision on Detention; IA007/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) ("Second Appeal Decision on Detention"); IA015/F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022 (confidential version filed on 25 March 2022) ("Third Appeal Decision on Detention"); IA021/F00005/RED, Public Redacted Version of Decision on Selimi Appeal Against "Decision on Periodic Review of Detention of Rexhep Selimi", 2 August 2022 (confidential version filed on 29 July 2022) ("Fourth Appeal Decision on Detention"); IA033/F00006,

4. Between 9 and 18 February 2026, the Trial Panel heard the closing statements of the Parties,<sup>11</sup> followed by the Presiding Judge's declaration that the case is closed pursuant to Rule 136(1) of the Rules.<sup>12</sup>

5. On 16 March 2026, following submissions from the Parties,<sup>13</sup> the Trial Panel issued the Impugned Decision, denying Selimi's request for provisional release.<sup>14</sup>

6. On 16 April 2026, subsequent to a request for clarification from the Trial Panel,<sup>15</sup> Selimi waived his right to a bi-monthly detention review until the Appeals Panel issued a decision on the Appeal.<sup>16</sup>

7. In the Appeal, Selimi develops five grounds of appeal consisting of alleged errors of law and fact, and of alleged abuse of discretion committed by the Trial Panel.<sup>17</sup> Selimi requests that the Court of Appeals Panel reverse the Impugned Decision and order Selimi's provisional release.<sup>18</sup>

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Decision on Rexhep Selimi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention, 13 August 2025 ("Fifth Appeal Decision on Detention").

<sup>11</sup> Transcript, 9 February 2026; Transcript, 10 February 2026; Transcript, 11 February 2026; Transcript, 12 February 2026; Transcript, 13 February 2026; Transcript, 16 February 2026; Transcript, 18 February 2026.

<sup>12</sup> Transcript, 18 February 2026, p. 29238.

<sup>13</sup> F03684, Prosecution submission pertaining to periodic detention review of Rexhep Selimi, 19 February 2026; F03689/RED, Public Redacted Version of Selimi Defence Response to Prosecution submission pertaining to periodic review of Rexhep Selimi, 23 March 2026 (confidential version filed on 2 March 2026) ("Defence Response to SPO Submissions"); F03694, Prosecution Reply to Selimi Defence Response F03689, 5 March 2026 (confidential, reclassified as public on 17 March 2026).

<sup>14</sup> Impugned Decision, para. 61.

<sup>15</sup> CRSPD977, Email from Trial Panel to Selimi Defence re Review of Detention, 13 April 2026 (confidential).

<sup>16</sup> F03720, Selimi Defence Notification of Waiver of Detention Review, 16 April 2026 (strictly confidential); F03720/A01, Annex 1 to Selimi Defence Notification of Waiver of Detention Review, 16 April 2026 (strictly confidential).

<sup>17</sup> Appeal, paras 2, 6-34.

<sup>18</sup> Appeal, para. 36. See also Reply, para. 12.

## II. STANDARD OF REVIEW

8. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.<sup>19</sup>

## III. PUBLIC FILINGS

9. The Appeals Panel notes that the Appeal was filed strictly confidentially pursuant to Rule 84(2) of the Rules.<sup>20</sup> As a result, all subsequent submissions on appeal were also filed strictly confidentially pursuant to Rule 82(4) of the Rules.<sup>21</sup> The Panel further notes that the Impugned Decision was initially filed confidentially. However, a public redacted version of the Impugned Decision was subsequently filed. The Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all submissions filed before the Panel.<sup>22</sup> The Panel therefore orders the Defence and the SPO to file public redacted versions of the Appeal, the

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<sup>19</sup> KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020 ("*Gucati* Appeal Decision on Matters Related to Arrest and Detention"), paras 4-14. See also e.g. KSC-BC-2023-12, IA001/F00005, Decision on Isni Kilaj's Appeal Against Decision on Continued Detention, 28 January 2025 ("*Kilaj* First Appeal Decision on Detention"), paras 15-17; First Appeal Decision on Detention, paras 4-7.

<sup>20</sup> See Appeal, para. 35.

<sup>21</sup> See Response, para. 39; Reply, para. 11.

<sup>22</sup> See e.g. IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) ("*Veseli* Second Appeal Decision on Detention"), paras 8-9. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

Response and the Reply, or to indicate, through a filing, whether they can be reclassified as public within ten days of receiving notification of the present Decision.

#### IV. DISCUSSION

##### A. PRELIMINARY MATTER

10. As a preliminary remark, the Court of Appeals Panel is aware that, at this stage, the Accused has already been in detention for more than five and a half years. In this regard, the Appeals Panel takes the opportunity to underscore the severe restriction of fundamental rights of a person caused by a deprivation of liberty and the paramount importance of the proportionality principle when conducting a review of the reasonableness of a person's detention. Namely, panels before the Specialist Chambers have the duty to consider whether a person's detention on remand is strictly necessary to mitigate the risks of flight, obstruction or commission of further crimes under Article 41(6)(b) of the Law or whether other, less stringent, measures could be sufficient for that purpose.<sup>23</sup> In that regard, the Panel specifically recalls that the longer a person remains in (pre-)trial detention, the higher the burden on the Specialist Chambers to justify continued detention.<sup>24</sup> The Panel also recalls that quasi-automatic prolongation of detention would fail to provide the required standard of protection against arbitrariness.<sup>25</sup> It is with these principles in mind that the Appeals Panel has considered the present Appeal.

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<sup>23</sup> See *Gucati* Appeal Decision on Matters Related to Arrest and Detention, para. 72 and jurisprudence cited therein; KSC-CC-PR-2017-01, F00004, 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 Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 26 April 2017 ("Constitutional Court Judgment of 26 April 2017 on Referral of Rules"), paras 113-114; First Appeal Decision on Detention, para. 79; KSC-BC-2018-01, IA007/F00007/RED, Public Redacted Version of Decision on the Specialist Prosecutor's Office's Appeal Against Decision on Isni Kilaj's Review of Detention, 15 May 2024 (confidential version filed on 13 May 2024), para. 18.

<sup>24</sup> *Gucati* Appeal Decision on Matters Related to Arrest and Detention, para. 73.

<sup>25</sup> Constitutional Court Judgment of 26 April 2017 on Referral of Rules, para. 115; PL002/F00005, Decision on Mr Veseli's Request for Protection of Legality, 19 December 2025 ("*Veseli* Supreme Court Second Decision on Protection of Legality"), para. 60.

B. WHETHER THE TRIAL PANEL ERRED IN RELYING ON *EX PARTE* SUBMISSIONS UNAVAILABLE TO THE DEFENCE (GROUND 1)

**1. Submissions of the Parties**

11. Selimi submits that the Trial Panel erred by relying on the *ex parte* report from the Witness Protection and Support Office (“WPSO Assessment” and “WPSO”) despite the fact that it was unavailable to the Defence to determine the risk of obstruction of the proceedings posed by his release.<sup>26</sup> More specifically, he argues that the Trial Panel relied on the WPSO Assessment to make “determinative” findings on: (i) the persistence of a climate of witness intimidation in Kosovo; (ii) the impact of the closure of the case on public scrutiny; and (iii) the fact [REDACTED].<sup>27</sup> Selimi further contends that the Trial Panel’s failure to notify the Defence of the existence of the WPSO Assessment, preventing it from making submissions in this respect, constitutes a miscarriage of justice.<sup>28</sup> Selimi argues that “had the Trial Panel not placed reliance on such material, its assessment of the existence or magnitude of the risk of retaliation or of securing recantations would have differed”.<sup>29</sup>

12. Selimi points out that the WPSO Assessment was filed strictly confidentially and *ex parte* three days prior to the issuance of the Impugned Decision and that, after the issuance of the Impugned Decision, following a request from the Defence, the Registry filed a confidential redacted version of the WPSO Assessment.<sup>30</sup> Selimi further asserts that because the confidential redacted version of the WPSO Assessment only concerns Annex 1, the Defence is at the time of the filing of the Appeal still not

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<sup>26</sup> Appeal, paras 6-7, 12, referring to F03697, Registrar’s and WPSO’s Submissions, 16 March 2026 (strictly confidential and *ex parte*, reclassified as strictly confidential on 26 March 2026) (“WPSO Cover Filing”) and F03697/A01, Annex 1 to Registrar’s and WPSO’s Submissions, 16 March 2026 (strictly confidential and *ex parte*) (“WPSO Assessment”). See also Appeal, para. 2(i); Reply, para. 5.

<sup>27</sup> Appeal, para. 6.

<sup>28</sup> Appeal, para. 12. See also Appeal, para. 8; Reply, paras 5-6.

<sup>29</sup> Appeal, para. 12.

<sup>30</sup> Appeal, para. 7. Selimi points out that the Registry requested the reclassification of the WPSO Cover Filing and Annex 2 and to remove the *ex parte* marking but that at the time of filing the Appeal the *ex parte* status of these filings had yet to be lifted. See Appeal, para. 7.

in a position to ascertain the context in which the WPSO Assessment was prepared, on whose request and the justification for its classification.<sup>31</sup>

13. Selimi points to the jurisprudence of other international tribunals such as the International Criminal Court (“ICC”) and the European Court of Human Rights (“ECtHR”) to show the prejudice inherent in the reliance on *ex parte* materials.<sup>32</sup> He argues that such course of action can put a party at a substantial disadvantage by being deprived of an opportunity to react to such submissions.<sup>33</sup> Selimi contends that *ex parte* submissions have been allowed only in exceptional circumstances “when truly necessary and when no alternative procedures are available, and proportionate given the potential prejudice to the accused.”<sup>34</sup> Selimi further points out that even where *ex parte* submissions were indeed relied upon, the chambers required the parties concerned to be notified about the existence and legal basis of such submissions and be provided with the opportunity to make submissions unless doing so “would risk revealing the very thing that requires protection”.<sup>35</sup>

14. According to Selimi, in the present case, there were no circumstances justifying the *ex parte* status of the WPSO Assessment and notifying the Defence of its existence would not have prejudiced any interest allegedly protected by the *ex parte* status.<sup>36</sup> In Selimi’s view, the Trial Panel also erred in failing to inform the Defence and in not

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<sup>31</sup> Appeal, para. 8. See also Appeal, paras 7, 10-11.

<sup>32</sup> Appeal, para. 9.

<sup>33</sup> Appeal, para. 9. See also Appeal, para. 12.

<sup>34</sup> Appeal, para. 9, referring to ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2230, Decision on expedited Defence request for reclassification of *ex parte* documents, 15 February 2018 (“*Ntaganda* Decision on Defence Reclassification Request”), para. 8.

<sup>35</sup> Appeal, para. 9, referring to ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1058, Decision on the Procedures to be Adopted for *ex parte* Proceedings, 6 December 2007 (“*Lubanga* Decision on *Ex Parte* Proceedings”), para. 12.

<sup>36</sup> Appeal, para. 10. See also Reply, para. 5. In addition, Selimi submits that if the WPSO Assessment was provided to the Trial Panel without an invitation from the Trial Panel to that effect, other chambers determined that *ex parte* submissions should not be filed “merely to apprise the chamber of particular developments without seeking any particular relief”. See Appeal, para. 11.

making the WPSO Assessment available to the Parties prior to the issuance of the Impugned Decision.<sup>37</sup>

15. In its Response, the SPO notes at the outset that the Trial Panel has consistently found that if released, Selimi would pose a real risk of obstructing the proceedings within the meaning of Article 41(6)(b)(ii)-(iii) of the Law, based on a “multi-factored and holistic” analysis.<sup>38</sup>

16. The SPO argues that the arguments brought by Selimi fail on their merits because: (i) they are based on a “misunderstanding of the role of the intimidation issue” and of the WPSO Assessment in the Impugned Decision as a whole; (ii) *ex parte* submissions relating to the safety and security of witnesses are legitimate; and (iii) there was no prejudice arising from the Trial Panel’s reliance on the WPSO Assessment.<sup>39</sup>

17. First, recalling that the Court of Appeals Panel has confirmed that the climate of witness intimidation in Kosovo is a relevant factor for the Trial Panel to consider when determining the existence of a risk within the meaning of Article 41(6)(b)(ii) of the Law,<sup>40</sup> the SPO contends that in the Impugned Decision, the Trial Panel did not rely on this factor alone but rather conducted a “holistic evaluation” based on a “combination of factors – both contextual and individual to Selimi” when finding that a risk still existed.<sup>41</sup> According to the SPO, the scope of reliance on the WPSO Assessment is confined to confirming “pre-existing” findings and is therefore not “determinative” in the Trial Panel’s decision to continue Selimi’s detention.<sup>42</sup>

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<sup>37</sup> Appeal, paras 10, 12; Reply, para. 5.

<sup>38</sup> Response, para. 8. See also Response, para. 11.

<sup>39</sup> Response, para. 9. See also Response, para. 17.

<sup>40</sup> Response, para. 10.

<sup>41</sup> Response, para. 10. See also Response, paras 8-9, 11.

<sup>42</sup> Response, para. 11.

18. Second, the SPO argues that the *ex parte* nature of the WPSO Assessment was proper and that, in accordance with the Law and the Rules, the Registry is entitled to make representations to the Trial Panel with respect to the issue of victims and witnesses protection.<sup>43</sup> The SPO further argues that the jurisprudence relied upon by Selimi affirms that *ex parte* communications between a neutral organ tasked with the duty to protect witnesses and the relevant Panel is appropriate and lawful.<sup>44</sup>

19. Third, the SPO asserts that Selimi suffers no prejudice from the Trial Panel's reliance on the WPSO Assessment or from not having access to it.<sup>45</sup> The SPO argues that the Trial Panel's findings as to the continued existence of a climate of intimidation in Kosovo and that [REDACTED] are not "new" issues drawn from the WPSO Assessment alone and of which Selimi had no prior knowledge but rather findings made previously and/or consistently repeated in the present proceedings.<sup>46</sup> In addition, the SPO recalls that the content of the WPSO Assessment is substantially based on publicly available sources.<sup>47</sup>

20. In his Reply, Selimi argues that the SPO's assertion that the Trial Panel's reliance on the WPSO Assessment was not prejudicial because it does not address "new issues" and the Trial Panel relied on a "multitude of additional factors" is defeated given that the only specific evidence addressed in the Impugned Decision is that outlined in the WPSO Assessment.<sup>48</sup> Selimi points out that in light of this

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<sup>43</sup> Response, para. 12. See also Response, paras 9, 13. The SPO also points out that the Registry and WPSO have previously made *ex parte* submissions on witness issues in the present proceedings. See Response, paras 12-13.

<sup>44</sup> Response, para. 12. See also Response, para. 13.

<sup>45</sup> Response, paras 14, 16. See also Response, paras 9, 15. In that respect, the SPO submits that Selimi does not identify what submissions he would have made had he been notified of the WPSO Assessment. See Response, para. 16.

<sup>46</sup> Response, paras 14-15.

<sup>47</sup> Response, para. 14.

<sup>48</sup> Reply, paras 4, 6. Selimi points out that the other factors considered by the Trial Panel are entirely irrelevant to the issue of retaliation and recantations. See Reply, para. 4. See also Reply, para. 3.

“procedural development”, the Trial Panel had to engage in a *de novo* assessment and address “the new particularities” of the alleged risk.<sup>49</sup>

## 2. Assessment of the Court of Appeals Panel

21. At the outset, the Appeals Panel notes that the WPSO Assessment was filed strictly confidentially and *ex parte*, on 16 March 2026, the same day the Impugned Decision was issued.<sup>50</sup> The Panel further observes that the WPSO Assessment was submitted pursuant to the Registrar’s and WPSO’s responsibilities under Articles 23 and 34(8) of the Law and Rules 23(2) and 27 of the Rules “[REDACTED]”.<sup>51</sup>

22. It is not disputed that the WPSO Assessment was not available to the Parties at the time due to its classification as *ex parte*.<sup>52</sup> In addition, it was filed only a few hours before the issuance of the Impugned Decision.<sup>53</sup> The Panel further notes that the Trial Panel does not seem to have notified the Parties of the existence of this filing at any given time prior to the issuance of the Impugned Decision. As a result, the Panel finds that the Defence was not in a position to apprise itself of the content of the document

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<sup>49</sup> Reply, para. 6.

<sup>50</sup> The Panel notes that while the cover page of the WPSO Cover Filing indicates the date of 13 March 2026, it was in fact distributed on 16 March 2026. Selimi is therefore incorrect in stating that the WPSO Assessment was filed three days before the Impugned Decision. See Appeal, para. 7.

<sup>51</sup> See WPSO Cover Filing, para. 1. Article 23 of the Law concerns the protection of victims and witnesses; Article 34(8) of the Law concerns the role of WPSO; Rule 23(2) of the Rules relates to the possibility for the Registry to make representations to the President or any Panel on issues arising in the context of a specific case which affect the discharge of his or her functions; Rule 27 of the Rules concerns the responsibilities of the Registrar for Witness Protection and Support.

<sup>52</sup> The Panel notes that on 17 March 2026, the Registry filed a strictly confidential redacted version of the WPSO Assessment and requested that the WPSO Cover Filing and Annex 2 to the WPSO Assessment be reclassified as confidential and strictly confidential, respectively. On 26 March 2026, the same day the Appeal was filed, the filings were reclassified accordingly, and their *ex parte* status was lifted. See F03702, Submission of Redacted Version of F03697/A01 and request for reclassification of F03697 and F03697/A02, 17 March 2026 (confidential); F03702/A01, Annex 1 to Submission of Redacted Version of F03697/A01 and request for reclassification of F03697 and F03697/A02, 17 March 2026 (strictly confidential); CRSPD973, Lifting of *Ex Parte* Status of F03697 and F03697\_A02, 26 March 2026 (confidential).

<sup>53</sup> The WPSO Assessment was filed at 09:23 and the Impugned Decision at 13:33.

nor to make any submissions in that respect in the context of the review of Selimi's continued detention.<sup>54</sup>

23. The Panel will first address the *ex parte* classification of the WPSO Assessment. The legal framework of the Specialist Chambers expressly provides for the possibility for the Registrar to make representations to a Panel on issues arising in the context of a specific case which affect the discharge of her functions.<sup>55</sup> It is precisely under that legal basis that the WPSO Assessment was submitted. The Panel also notes that the WPSO Assessment and related filings were filed as strictly confidential and *ex parte* "in light of the sensitive nature of information they refer to".<sup>56</sup>

24. Given that the WPSO Assessment concerns issues relating to the safety and security of (potential) witnesses before the Specialist Chambers, the Panel considers that it was within the scope of its statutory role and appropriate for the Registry to file the WPSO Assessment with an *ex parte* classification.<sup>57</sup> Selimi's contention that there were no circumstances requiring the strictly confidential and *ex parte* classification of the WPSO Assessment is therefore rejected.<sup>58</sup> Furthermore, contrary to Selimi's claim, there is no indication that the WPSO Assessment was submitted at the request of the Trial Panel. In any event, the Panel is of the view that whether it was initiated by the Trial Panel has no impact on the propriety of the classification of the WPSO Assessment.<sup>59</sup>

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<sup>54</sup> See above, fn. 52.

<sup>55</sup> See Rule 23(2) of the Rules.

<sup>56</sup> WPSO Cover Filing, para. 2.

<sup>57</sup> Contra Appeal, para. 10. The Panel recalls that in some cases, it may be necessary to withhold certain evidence from the Defence in order to preserve the fundamental rights of another individual or to safeguard an important public interest. See KSC-BC-2020-07, IA005/F00008/RED, Public Redacted Version of Decision on the Appeals Against Disclosure Decision, 29 July 2021 (confidential version filed on 29 July 2021), para. 35.

<sup>58</sup> See Appeal, para. 10.

<sup>59</sup> See Appeal, paras 8, 11. In addition, the Panel considers that there is no requirement for the Registry to "seek[] any particular relief" when filing *ex parte* submissions within the framework of its functions concerning witness protection and support. Contra Appeal, para. 11.

25. Having found no procedural error in the fact that the WPSO Assessment was filed strictly confidential and *ex parte*, the Panel will turn next to consider whether the Trial Panel nonetheless erred in relying on the WPSO Assessment in the circumstances of the case.

26. The Appeals Panel recalls that, as confirmed by the jurisprudence of the ECtHR, the principle of equality of arms, which is an inherent feature of a fair trial guaranteed under Article 31 of the Constitution and Article 21 of the Law, requires that each party is given a reasonable opportunity to present its case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the opposing party.<sup>60</sup> This principle also applies in the context of the review of detention. In that regard, the Panel recalls that, considering the impact of deprivation of liberty on the fundamental rights of the accused, proceedings by means of which the lawfulness of detention is challenged should meet the basic requirements of a fair trial, including the right to have knowledge of and comment on the observations made or evidence adduced by the other party.<sup>61</sup>

27. In the present case, the Appeals Panel observes that the WPSO Assessment was not filed by the SPO but by a neutral organ in charge of witness protection and conducting risk assessments, namely the WPSO within the Registry.<sup>62</sup> For this reason,

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<sup>60</sup> See e.g. ECtHR, *Dombo Beheer B.V. v. the Netherlands*, no. 17358/90, Judgment, 27 October 1993, para. 33; ECtHR, *Bulut v. Austria*, no. 14448/88, Judgment, 22 February 1996, para. 47; ECtHR, *Foucher v. France*, no. 22209/93, Judgment, 18 March 1997, para. 34. See also KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, para. 50; Constitutional Court Judgment of 26 April 2017 on Referral of Rules, para. 164; IA024/F00019, Decision on Defence Appeals against “Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant”, 27 December 2022, para. 77.

<sup>61</sup> KSC-BC-2020-04, IA001/F00005/RED, Public Redacted Version of Decision on Pjetër Shala’s Appeal Against Decision on Provisional Release, 20 August 2021 (confidential version filed on 20 August 2021) (“*Shala* First Appeal Decision on Detention”), para. 13. See also KSC-BC-2020-07, IA002/F00005, Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention, 9 February 2021 (“*Haradinaj* First Appeal Decision on Detention”), para. 43; ECtHR, *Çatal v. Turkey*, no. 26808/08, Judgment, 17 April 2012, para. 32.

<sup>62</sup> See ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-2413, Decision on Defence request for disclosure of *ex parte* communication between the Chamber and the VWU, 22 November 2022 (“*Al Hassan* Decision on Defence Request for Disclosure”), paras 7-9.

the Panel considers that the present situation differs from the ECtHR and ICC jurisprudence upon which Selimi relies to the extent that, here, none of the Parties had access to the WPSO Assessment.<sup>63</sup> The Defence was therefore not placed at a substantial disadvantage vis-à-vis the SPO. As a result, the Panel finds that there is no violation of the principle of equality of arms as such.

28. That being said, the Panel is mindful that beyond the principle of equality of arms that applies among the Parties, information which is *essential* for the assessment

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<sup>63</sup> See Appeal, para. 9 and jurisprudence cited in fns 21-25: ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-208, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute”, 8 September 2015, paras 87-88 (with respect to periodic review of detention, stressing the importance for the prosecution to have full access to the arguments made by the accused); ECtHR, *Brandstetter v. Austria*, nos. 11170/84, 12876/87, 13468/87, Judgment, 28 August 1991 (“*Brandstetter v. Austria* Judgment”), paras 67-68 (where no copy of the submissions of the Prosecution was sent to the applicant and that he was not informed of them having been filed either); ECtHR, *Lanz v. Austria*, no. 24430/94, Judgment, 31 January 2002 (“*Lanz v. Austria* Judgment”), para. 62 (where the ECtHR found that a party which is not informed about written submissions of the opposing party and thus deprived from reacting thereto is put at a substantial disadvantage vis-à-vis its opponent); ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2666-Red, Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, 30 March 2021 (“*Ntaganda* Appeal Judgment”), para. 119 (where the ICC Appeals Chamber, relying on the *Lanz v. Austria* Judgment and the *Brandstetter v. Austria* Judgment, stated that “[w]hen deciding on the advisability or modalities of the notification of an *ex parte* submission to the accused person, a trial chamber must be mindful of the duty to respect the principle of the equality of arms”); *Al Hassan* Decision on Defence Request for Disclosure, para. 6 (recalling the findings of the ICC Appeals Chamber in *Ntaganda* and of the ECtHR in *Lanz v. Austria*); *Ntaganda* Decision on Defence Reclassification Request, para. 8 (finding that the other party needs to be notified of *ex parte* filings); ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-108-Corr, Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Statute, 19 May 2006, paras 17-18 (stressing that the Defence must be informed of *ex parte* applications by the Prosecution); ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-568, Judgment on the Prosecutor’s Appeal of the Decision of Pre-Trial Chamber I entitled “Decision Establishing General Principles Governing Applications to Restrict Disclosure, 13 October 2006, para. 67 (with respect to the right of the *other participant* to be notified when an application for *ex parte* proceedings has been made, the ICC Appeals Chamber stressed the need for flexibility in instances where such notification would be inappropriate); *Lubanga* Decision on *Ex Parte* Proceedings, para. 12 (on the need to notify the *other party* of procedures *ex parte*); ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2387, Decision on requests in relation to D-0308, 29 August 2019, para. 12 (on the need to notify the *other party* of the existence of *ex parte* filings).

of the lawfulness of detention should be made available in an appropriate manner to the accused.<sup>64</sup>

29. The Panel will therefore turn to examine to what extent the Trial Panel relied on the WPSO Assessment when reaching its findings on the risk of obstruction in order to assess whether the information contained in the WPSO Assessment was “essential” for the Trial Panel’s decision to order Selimi’s continued detention.

30. First, the Trial Panel relied on the WPSO Assessment with respect to its finding concerning the climate of witness intimidation.<sup>65</sup> The Panel observes that the continued existence of a climate of witness intimidation is a longstanding finding that has been made by the Trial Panel on repeated occasions,<sup>66</sup> and upheld by the Court of Appeals Panel.<sup>67</sup> In addition, the Panel recalls that reliance on this contextual factor alone is insufficient to establish by itself the risk of obstruction to the proceedings, as rightly acknowledged by the Trial Panel.<sup>68</sup>

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<sup>64</sup> See *Shala* First Appeal Decision on Detention, para. 13. See also ECtHR, *Podeschi v. San Marino*, no. 66357/14, Judgment, 13 April 2017 (“*Podeschi v. San Marino* Judgment”), para. 176; ECtHR, *Albrechtas v. Lithuania*, no. 1886/06, Judgment, 19 January 2016 (“*Albrechtas v. Lithuania* Judgment”), para. 75; ECtHR, *Emilian-George Igna v. Romania*, no. 21249/05, Judgment, 26 November 2013 (“*Emilian-George Igna v. Romania* Judgment”), para. 27; ECtHR, *Mooren v. Germany*, no. 11364/03, Judgment [GC], 9 July 2009, para. 124.

<sup>65</sup> See Impugned Decision, para. 33, fn. 63, referring to WPSO Assessment, p. 2.

<sup>66</sup> See e.g. First Detention Decision, para. 42; F00372/RED, Public Redacted Version of Decision on Review of Detention of Rexhep Selimi, 30 June 2021 (confidential version filed on 25 June 2021) (“Second Detention Decision”), para. 41; F00580/RED, Public Redacted Version of Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep, 8 December 2021 (confidential version filed on 26 November 2021) (“Third Detention Decision”), para. 34; F00802/RED, Public Redacted Version of Decision on Periodic Review of Detention of Rexhep Selimi, 24 May 2022 (confidential version filed on 13 May 2022) (“Fourth Detention Decision”), para. 32; F01213/RED, Public Redacted Version of Decision on Periodic Review of Detention of Rexhep Selimi, 18 January 2023 (confidential version filed on 17 January 2023) (“Seventh Detention Decision”), paras 23-24; F03661, Decision on Periodic Review of Detention of Rexhep Selimi, 16 January 2026 (“Twenty-Fourth Detention Decision”), para. 21.

<sup>67</sup> See Fifth Appeal Decision on Detention, para. 31. See also First Appeal Decision on Detention, para. 61.

<sup>68</sup> See Impugned Decision, para. 38. See also Fifth Appeal Decision on Detention, para. 31; First Appeal Decision on Detention, para. 61.

31. Second, the Trial Panel relied on the WPSO Assessment to support its finding that the fact [REDACTED].<sup>69</sup> Likewise, the Panel notes that the Trial Panel's finding that the risk of intimidation may exist even after a witness has testified is not a "new finding" but one previously made by the Trial Panel on several occasions,<sup>70</sup> and upheld by the Court of Appeals Panel.<sup>71</sup>

32. Consequently, while the Appeals Panel acknowledges that the WPSO Assessment contains new information concerning these factors and provides additional contextual elements in support, the continued existence of these factors itself is not new. Contrary to what Selimi asserts, the Trial Panel did not rely exclusively on information not available to the Defence from the WPSO Assessment to make its findings with respect to the risk of obstruction.<sup>72</sup> Rather, the Panel finds that the Trial Panel only relied tangentially on the content of the WPSO Assessment to confirm pre-existing factors. In addition, the Panel recalls that the WPSO Assessment was mentioned with respect to two factors only while the Trial Panel's conclusion as to the continued existence of a risk of obstruction is based on several additional factors.<sup>73</sup> Having reviewed the document, the Appeals Panel is satisfied that the information contained in the WPSO Assessment merely supported the Trial Panel's assessment and did not provide an independent basis for any of the Trial Panel's findings as to the fact that a risk of obstruction continued to exist.<sup>74</sup>

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<sup>69</sup> See Impugned Decision, para. 35, fn. 68, referring to WPSO Assessment, p. 5.

<sup>70</sup> See F03175/COR/RED, Public Redacted Version of Corrected Version of Consolidated Decision on Selimi Defence Request for Provisional Release and on Periodic Review of Detention of Rexhep Selimi, 11 June 2025 (confidential corrected version filed on 11 June 2025, uncorrected confidential version filed on 13 May 2025) ("Twenty-First Detention Decision"), paras 36, 47; F03482, Decision on Periodic Review of Detention of Rexhep Selimi, 18 September 2025 ("Twenty-Second Detention Decision"), para. 27; F03590, Decision on Periodic Review of Detention of Rexhep Selimi, 18 November 2025 ("Twenty-Third Detention Decision"), para. 19; Twenty-Fourth Detention Decision, para. 22.

<sup>71</sup> See Fifth Appeal Decision on Detention, paras 50-53. See also Fifth Appeal Decision on Detention, para. 54, fn. 140.

<sup>72</sup> See Reply, para. 6.

<sup>73</sup> See Impugned Decision, paras 32, 34-35, 37-38. See also below, paras 48-49.

<sup>74</sup> See Impugned Decision, paras 33-35, 41.

33. Therefore, the Panel is not persuaded that the Trial Panel's limited reliance on the WPSO Assessment was "determinative" or "essential", or that the Trial Panel would have made different findings on the existence of a risk of obstruction had it not relied on the WPSO Assessment.<sup>75</sup>

34. The Panel recalls that when a party alleges on appeal that its right to a fair trial has been infringed, it must demonstrate that this violation caused prejudice considerably restricting its right to an effective defence.<sup>76</sup> The Panel is also mindful that there is no automatic presumption of prejudice when judges consider *ex parte* submissions.<sup>77</sup> As the Defence had access to a redacted version of the WPSO Assessment before the filing of the Appeal,<sup>78</sup> it could have therefore made concrete submissions on any alleged prejudice to Selimi.<sup>79</sup> The Panel notes that Selimi made detailed, extensive submissions in the Defence Response to SPO Submissions regarding the risk of obstruction, including on the specific issues of the climate of witness intimidation and the risks of recantation and retaliatory attacks.<sup>80</sup> The Panel observes that Selimi does not specify in his Appeal whether his own submissions would have been different had he been able to access the WPSO Assessment prior to the issuance of the Impugned Decision. In these circumstances, the Panel is satisfied

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<sup>75</sup> Contra Appeal, para. 6.

<sup>76</sup> *Shala* First Appeal Decision on Detention, para. 17; *Haradinaj* First Appeal Decision on Detention, para. 44.

<sup>77</sup> See *Ntaganda* Appeal Judgment, para. 122. See also *Podeschi v. San Marino* Judgment, para. 176; *Albrechtas v. Lithuania* Judgment, para. 75; *Emilian-George Igna v. Romania* Judgment, para. 27.

<sup>78</sup> The Panel recalls that the Registry filed a strictly confidential redacted version of the WPSO Assessment on 17 March 2026. See above, fn. 52.

<sup>79</sup> It follows from a comparative review of the strictly confidential redacted version and of the strictly confidential and *ex parte* version of the WPSO Assessment that the relevant parts of the WPSO Assessment relied upon by the Trial Panel are not redacted in the confidential redacted version of the WPSO Assessment to which Selimi has access. The Panel is therefore satisfied that, contrary to his claim, Selimi is now in a position to fully address and challenge the WPSO Assessment. See Impugned Decision, paras 33, 35, fns 63, 68, referring to WPSO Assessment, pp. 2, 5. Contra Appeal, para. 7.

<sup>80</sup> See Defence Response to SPO Submissions, paras 4-11. In addition, the Panel observes that, in the context of a separate litigation before the Trial Panel, Selimi also challenged the allegation that [REDACTED], and notably made submissions regarding [REDACTED] which is addressed in the WPSO Assessment. See [REDACTED]. See also [REDACTED]; WPSO Assessment, p. 9.

that the limited reliance by the Trial Panel on the WPSO Assessment was not prejudicial to the Accused.

35. In light of the above, the Appeals Panel does not find that the Trial Panel erred. The Panel considers however that it would have been appropriate to ensure that a redacted version of the WPSO Assessment was disclosed to the Parties prior to the issuance of the Impugned Decision. Recalling that the key principle governing the application of Article 6 of the European Convention on Human Rights is fairness,<sup>81</sup> the Panel is of the view that the Trial Panel should favour the widest possible access to potentially relevant materials. This finding applies particularly to matters implicating the Accused's fair trial rights, which inherently encompass the review of the lawfulness of the detention.

36. As to Selimi's claim that the WPSO Assessment warranted a *de novo* assessment by the Trial Panel,<sup>82</sup> the Panel considers that the WPSO Assessment does not amount to a "procedural development" or a change of circumstances. In any event, and as demonstrated in the next section, the Panel is satisfied that the Trial Panel duly examined whether the circumstances underpinning detention "still exist[ed]" at the time of the review and under the specific circumstances of the case.<sup>83</sup>

37. The Appeals Panel therefore finds that Selimi has failed to demonstrate that the Trial Panel erred in the way it relied on the WPSO Assessment in its assessment of the risk of obstruction. Accordingly, the Panel dismisses Selimi's Ground of Appeal 1.

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<sup>81</sup> See ECtHR, *Gregačević v. Croatia*, no. 58331/09, Judgment, 10 July 2012, para. 49.

<sup>82</sup> See Reply, para. 6.

<sup>83</sup> See Impugned Decision, para. 31; below, paras 54, 61, 67. See also e.g. *Haradinaj* First Appeal Decision on Detention, para. 55; *Veseli* Second Appeal Decision on Detention, para. 14; Second Appeal Decision on Detention, paras 12-13.

C. WHETHER THE TRIAL PANEL ERRED IN FINDING THAT SELIMI'S RELEASE POSES A RISK OF OBSTRUCTION OF THE PROCEEDINGS (GROUNDS 2, 3, 4)

**1. Submissions of the Parties**

38. The Court of Appeals Panel observes that Grounds 2, 3 and 4 are connected to each other in that they allege that the factors relied upon by the Trial Panel – both individually and collectively – do not support the conclusion that if released, Selimi will pose a risk of obstruction to the proceedings.<sup>84</sup> Therefore, the Panel will consider these grounds together.

39. Under Ground 2, Selimi argues that the Trial Panel erred in relying exclusively on the disclosure of the names and personal details of certain sensitive witnesses to him to conclude that his release “would not be conducive to [their] effective protection”.<sup>85</sup> Selimi submits that the Trial Panel failed to provide any additional information regarding the identity of the said witnesses or the nature of the risk to which they would allegedly be exposed.<sup>86</sup> In Selimi’s view, the Trial Panel’s finding “necessarily implies” that the disclosure of the evidence against him, in compliance with the legal framework of the Specialist Chambers, “renders him ineligible for provisional release on account of him posing a risk of obstruction”.<sup>87</sup>

40. Under Ground 3, Selimi submits that the Trial Panel erred in concluding that, if released, there is a risk that he would attempt to obstruct the proceedings by securing recantation or by retaliation.<sup>88</sup> According to him, the Trial Panel wrongfully based its assessment on factual circumstances that are not related to his own acts and conduct.<sup>89</sup> As a result, Selimi argues that the Trial Panel’s conclusion is purely

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<sup>84</sup> Appeal, paras 2(ii)-2(iv), 13-30; Reply, paras 1-4, 7-8, 12. See also Reply, para. 6.

<sup>85</sup> Appeal, para. 16. See also Appeal, para. 13, referring to Impugned Decision, para. 34.

<sup>86</sup> Appeal, paras 13-14.

<sup>87</sup> Appeal, para. 15. See also Appeal, para. 16.

<sup>88</sup> Appeal, paras 17-22. See also Reply, para. 8.

<sup>89</sup> Appeal, paras 17-22. See also Reply, para. 8.

hypothetical and untailored to the specific circumstances of his case.<sup>90</sup> In support of his argument, Selimi specifically refers to the WPSO Assessment which he considers to be irrelevant to the risk assessment, groundless as well as speculative.<sup>91</sup>

41. Selimi recalls the requirement that “the risk of obstruction [must] be assessed in relation to the contemplated release and not *in abstracto*”.<sup>92</sup> Selimi argues that, had the Trial Panel complied with this requirement, it would have reached a different conclusion on whether his continued detention was necessary.<sup>93</sup>

42. Under Ground 4, Selimi challenges the Trial Panel’s reference to “a holistic evaluation of multiple factors” to support its findings.<sup>94</sup> Selimi argues that, contrary to this assertion, the factors identified by the Trial Panel such as the risks associated with retaliations and securing recantations are hypothetical, unsupported and/or “fall critically short of the evidentiary threshold”.<sup>95</sup> Addressing the Trial Panel’s reliance on his alleged disclosure of privileged information to unauthorised third parties, Selimi argues that the Trial Panel failed to explain how this alleged disclosure is connected to any risks of retaliation or of securing recantations.<sup>96</sup>

43. According to Selimi, the only circumstances identified by reference to specific information in the Trial Panel’s reasoning are the climate of witness intimidation, underscored by the WPSO Assessment, and Selimi’s increased knowledge of the evidence against him, underscored by the disclosure of witness identities and other personal information.<sup>97</sup> Relying on a finding made by the Court of Appeals Panel,

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<sup>90</sup> Appeal, paras 17, 21. See also Reply, para. 8.

<sup>91</sup> Appeal, paras 17-20. See also Reply, paras 6, 8.

<sup>92</sup> Appeal, para. 22.

<sup>93</sup> Appeal, para. 22. See also Appeal, para. 30.

<sup>94</sup> Appeal, para. 23.

<sup>95</sup> Appeal, para. 28. See also Appeal, paras 24-27. Regarding the risk of interferences with witnesses in parallel proceedings, Selimi underlines the Trial Panel’s finding that the potential for such interference is now limited. See Appeal, para. 25.

<sup>96</sup> Appeal, para. 29.

<sup>97</sup> Appeal, paras 23, 30. See also Reply, paras 4, 6.

Selimi argues that these considerations cannot serve as the sole basis to justify detention.<sup>98</sup>

44. The SPO responds that Grounds 2, 3 and 4 are meritless.<sup>99</sup> In response to Ground 2, the SPO argues that Selimi misrepresents the Impugned Decision and seeks to isolate a specific finding from the broader context in which it was made.<sup>100</sup> The SPO submits that the Trial Panel relied on numerous factors, properly tailored to the specific circumstances of this case.<sup>101</sup> The SPO contends that the disclosure of sensitive evidence to an accused is one of the factors that a panel may legitimately consider in order to decide whether continued detention is necessary, and that, in the present case, this specific factor was not the sole basis for ordering Selimi's continued detention.<sup>102</sup>

45. In response to Ground 3, the SPO argues that contrary to Selimi's assertion, the Trial Panel's findings are not "factually dependent on, or uniquely drawn from, the WPSO Assessment".<sup>103</sup> According to the SPO, the risks identified by the Trial Panel, including attempts to retaliate against or incentivise recantations by witnesses who have already testified, were based on a prior finding that Selimi disclosed confidential information at the Detention Facilities.<sup>104</sup> As to the WPSO Assessment, the SPO contends that it was relied upon by the Trial Panel to further confirm and strengthen the finding that a climate of intimidation still exists in Kosovo, a factor that is relevant to the overall risk assessment.<sup>105</sup>

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<sup>98</sup> Appeal, para. 23, referring to *Gucati* Appeal Decision on Matters Related to Arrest and Detention, para. 49. See also Appeal, para. 30.

<sup>99</sup> Response, paras 18-32.

<sup>100</sup> Response, para. 19.

<sup>101</sup> Response, paras 20-21. In the Reply, Selimi argues that the SPO's averment that the findings challenged in the Appeal were not the sole basis underlying the order for continued detention, when the Defence did not argue that such was the case, does not dispel the impropriety of the Trial Panel's conclusions. See Reply, para. 7.

<sup>102</sup> Response, paras 20-21.

<sup>103</sup> Response, para. 23.

<sup>104</sup> Response, para. 24.

<sup>105</sup> Response, para. 25.

46. In response to Ground 4, the SPO submits that the Trial Panel committed no errors in its analysis of the risks under Article 41(6)(b)(ii) of the Law and that it was entitled to consider contextual factors in addition to those individual to Selimi to reach its findings.<sup>106</sup> The SPO argues that Selimi acknowledges that his unauthorised disclosure of confidential information was a key consideration in support of the Trial Panel's finding that a risk of obstruction existed.<sup>107</sup> The SPO further argues that such consideration was especially relevant regarding the risks associated with retaliation and/or securing recantations of testimonies.<sup>108</sup> In light of this, the SPO contends that Selimi's claim that the assessment conducted by the Trial Panel was not sufficiently connected to information or evidence specific to his case is misleading and repetitive of previously failed arguments.<sup>109</sup>

47. As underlined by Selimi, his Reply "primarily addresses the SPO's repeated invitation to accept a 'two wrongs make a right' fallacy".<sup>110</sup> Selimi submits that the Response "criticizes the Appeal for 'dissecting'" individual findings from the risk assessment conducted by the Trial Panel.<sup>111</sup> Selimi argues that the requirements set out in Article 41(6)(b) of the Law must be demonstrated by reference to specific information or evidence and that an amalgamation of contextual factors cannot compensate for the lack of individualisation of the risk assessment.<sup>112</sup>

## 2. Assessment of the Court of Appeals Panel

48. The Panel notes that, in assessing the risks of obstructing the progress of the Specialist Chambers' proceedings under Article 41(6)(b)(ii) of the Law, the Trial Panel

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<sup>106</sup> Response, para. 28. The SPO also argues that the Court of Appeals Panel previously rejected similar arguments made by Selimi. See Response, para. 28, referring to Fifth Appeal Decision on Detention, paras 50-53.

<sup>107</sup> Response, para. 29, referring to Appeal, para. 29.

<sup>108</sup> Response, paras 30-31.

<sup>109</sup> Response, paras 30-31. See also Response, para. 32.

<sup>110</sup> Reply, para. 1.

<sup>111</sup> Reply, para. 2.

<sup>112</sup> Reply, paras 3-4.

reiterated as still valid some of its previous findings including that: (i) Selimi continues to enjoy a position of influence in Kosovo; (ii) there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo; and (iii) through the advancement of the proceedings, Selimi has gained insight into the evidence underpinning the serious charges against him.<sup>113</sup>

49. In the Impugned Decision, in addition to reiterating its previous findings set forth above, the Trial Panel focused its reasoning on: (i) the observation that the closure of Case 06 has heightened public scrutiny and that the WPSO Assessment confirmed the persisting climate of witness intimidation in Kosovo;<sup>114</sup> (ii) the finding that the disclosure of names and personal details of certain highly sensitive witnesses to the Accused would not be conducive to the effective protection of witnesses who already testified in these proceedings;<sup>115</sup> (iii) the finding that the risk of interference which detention seeks to prevent also includes any attempt to retaliate against witnesses or incentivise witnesses to recant who already testified in these proceedings;<sup>116</sup> and (iv) the fact that it appears that Selimi disclosed privileged information to unauthorised third parties.<sup>117</sup>

50. The Panel will first address Selimi's allegation that the Trial Panel erred in determining that he poses a risk to certain witnesses if released "simply by being aware of their identities" as a consequence of the disclosure of the evidence to him.<sup>118</sup> The Panel finds that Selimi's assertion is misleading as the Trial Panel did not base its reasoning solely on the fact that the names and personal details of witnesses who testified were disclosed to the Accused.<sup>119</sup> Instead, it stressed that, as found by the

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<sup>113</sup> Impugned Decision, para. 32.

<sup>114</sup> Impugned Decision, paras 33, 38-39.

<sup>115</sup> Impugned Decision, para. 34.

<sup>116</sup> Impugned Decision, para. 35.

<sup>117</sup> Impugned Decision, para. 37.

<sup>118</sup> Appeal, para. 14. See also Appeal, paras 13, 15-16.

<sup>119</sup> Appeal, para. 16.

Court of Appeals Panel, increased knowledge of the case alone is insufficient to deny provisional release.<sup>120</sup> Accordingly, the Trial Panel was aware that this factor could not be relied upon in isolation. The Panel further observes that, in assessing the risk of interference with witnesses, the Trial Panel also relied on its finding related to the risk of retaliation against witnesses and the risk to pressure witnesses to recant their testimonies.<sup>121</sup> Such finding was in turn supported by the Trial Panel's other finding that it appears that Selimi disclosed privileged information to unauthorised third parties,<sup>122</sup> and by the WPSO Assessment reporting, *inter alia*, on witness intimidation in Kosovo.<sup>123</sup>

51. As to Selimi's argument that the Trial Panel's finding is vague, the Panel notes that Selimi specifically alleges that the Trial Panel did not identify who the sensitive witnesses were and what information provided to him purportedly places these witnesses at risk.<sup>124</sup> The Panel observes that elsewhere in the Appeal, Selimi appears to be of the view that the Trial Panel's reliance on his increased knowledge of the case is a "specific factor[] supported by specific information or evidence".<sup>125</sup>

52. Although the Panel acknowledges that the Trial Panel does not identify the highly sensitive witnesses to which it is referring, the Panel is not convinced that the level of detail to which Selimi claims he is entitled is required for the purpose of assessing the impact of the disclosure of confidential witness related information on

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<sup>120</sup> Impugned Decision, para. 38.

<sup>121</sup> Impugned Decision, para. 35, referring to Fifth Appeal Decision on Detention, paras 47-54, fn. 140. The Panel recalls that, in the context of the Fifth Appeal Decision on Detention, it observed that the reasoning provided by the Trial Panel was relatively brief. However, the Court of Appeals Panel was able to discern how the Trial Panel reached its factual conclusion regarding the risks of retaliation/recantation, notably in light of its reference to the SPO's submissions that obstruction may occur at any stage of the proceedings, and in light of the Trial Panel's consideration of Selimi's possible involvement in unauthorised disclosure of confidential protected information. See Fifth Appeal Decision on Detention, para. 50.

<sup>122</sup> Impugned Decision, para. 37.

<sup>123</sup> Impugned Decision, paras 33, 39. See also Impugned Decision, para. 38.

<sup>124</sup> See Appeal, para. 14.

<sup>125</sup> See Appeal, para. 23.

the risk analysis to be conducted under Article 41(6)(b)(ii) of the Law. In that regard, the Court of Appeals Panel previously underlined that the determination of the existence of risks under Article 41(6)(b) of the Law does not require an individual assessment of the specific risks and/or vulnerabilities in relation to each particular witness.<sup>126</sup> In the present case, in light of the Trial Panel's related observation that the risk at stake is the disclosure to the public of sensitive information pertaining to witnesses,<sup>127</sup> the Panel considers that it is reasonable to assume that the Trial Panel's finding covers, at a minimum, all witnesses who were granted protective measures in the case and whose identities were not disclosed to the public. As to the nature of the information provided to Selimi, the Impugned Decision refers to "the names and personal details" of these witnesses.<sup>128</sup>

53. The Appeals Panel recalls the importance of the disclosure process in ensuring the fairness of the proceedings and that the rights of the Defence are respected, and that these considerations should remain paramount.<sup>129</sup> However, the Panel also recalls that, when considered together with other factors, an accused's access to and increased knowledge of the SPO's case through the disclosure of evidence may be a relevant factor to determine the existence of a risk of obstruction. Moreover, it provides an increased *ability* to obstruct the proceedings as more detailed information becomes available to the accused.<sup>130</sup> Therefore, the Panel finds that it was open to the Trial Panel to consider this factor, among others, for the purpose of determining whether Selimi's detention remains necessary. For the same reasons, the Panel equally

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<sup>126</sup> See Fifth Appeal Decision on Detention, para. 27.

<sup>127</sup> See Impugned Decision, para. 34.

<sup>128</sup> See Impugned Decision, para. 34.

<sup>129</sup> See e.g. KSC-BC-2023-12, IA008/F00006, Decision on Fadi Fazliu's Appeal Against Fifth Decision on Review of Detention, 5 December 2025 ("*Fazliu* Appeal Decision on Detention"), para. 64. See also KSC-CA-2022-01, F00044/RED, Public Redacted Version of Decision on Prosecution Notifications, 31 January 2023 (confidential and *ex parte* version filed on 15 September 2022, confidential redacted version filed on 26 September 2022), para. 20; KSC-CA-2024-03, F00028, Decision on Defence's Urgent Request for Suspension or Extension of Time to File its Appeal Brief, 21 November 2024 (confidential, reclassified as public on 25 November 2024), para. 15.

<sup>130</sup> *Fazliu* Appeal Decision on Detention, para. 65 (emphasis in original). See also Fifth Appeal Decision on Detention, para. 30; *Kilaj* First Appeal Decision on Detention, para. 44.

dismisses Selimi's argument that the Trial Panel requires him to choose between being informed of the evidence against him or being oblivious to this information in order to enhance his suitability for provisional release.<sup>131</sup>

54. Accordingly, the Panel dismisses Selimi's Ground of Appeal 2.

55. The Panel now turns to Selimi's argument that the Trial Panel erred by determining that his release would augment the risks of retaliation and of recantations allegedly based on "factual circumstances that are independent of [his] acts and conduct".<sup>132</sup>

56. At the outset, the Panel observes that the Parties disagree as to what evidence or information actually informed the Trial Panel's finding on the risks of retaliation and of recantations. While Selimi specifically refers to the WPSO Assessment,<sup>133</sup> the SPO asserts that the Trial Panel's findings are not dependent on the WPSO Assessment and rather result from Selimi's involvement in the disclosure of confidential information at the Detention Facilities.<sup>134</sup>

57. The Panel takes note of the arguments brought forward by Selimi regarding the relevance and reliability of the WPSO Assessment,<sup>135</sup> but will only address them to the limited extent that the representations provided by WPSO were relied upon by the Trial Panel to support its previous finding that the risk of interference "also includes any attempt to retaliate against or incentivise to recant witnesses who have already testified".<sup>136</sup>

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<sup>131</sup> See Appeal, para. 15.

<sup>132</sup> See Appeal, Ground 3, p. 9.

<sup>133</sup> See Appeal, paras 17-20. See also Reply, paras 6, 8.

<sup>134</sup> See Response, paras 23-24. See also Response, para. 25.

<sup>135</sup> See Appeal, paras 17-20. See also Reply, paras 6, 8.

<sup>136</sup> Impugned Decision, para. 35. Accordingly, the Panel will not address Selimi's arguments in paragraphs 18 and 19 of the Appeal as they are not challenging any specific findings of the Trial Panel and as they relate to information contained in the WPSO Assessment the Trial Panel did not rely upon in the Impugned Decision.

58. Turning to Selimi's argument that the WPSO Assessment makes no reference to him specifically,<sup>137</sup> the Panel finds that it is nonetheless connected to [REDACTED],<sup>138</sup> and finds that it was reasonable for the Trial Panel to rely, among other factors, on contextual information referring more generally to [REDACTED]. In that regard, the Panel also recalls that, to be able to reach conclusions as to the existence of a risk of obstruction under Article 41(6)(b) of the Law, there is no requirement that an accused be expressly mentioned in the materials relied upon.<sup>139</sup>

59. Ultimately, the Court of Appeals Panel already found, in a prior decision, that it was within the discretion of the Trial Panel to consider that the risk that Selimi obstructs the proceedings continues to exist despite the conclusion of the SPO case.<sup>140</sup> Further, as found by the Panel above, the Trial Panel only relied tangentially on the content of the WPSO Assessment to confirm pre-existing factors.<sup>141</sup> Therefore, the Panel is satisfied that it was open to the Trial Panel to refer, *inter alia*, to the WPSO Assessment to satisfy itself that the circumstances underpinning its pre-existing finding *still existed* concerning the fact that witnesses who testified in the case may still be exposed to intimidation.<sup>142</sup>

60. The Panel notes that Selimi further challenges the Trial Panel's observation that, even after the closure of the case, Rule 136(2) of the Rules foresees the possibility for a panel to hear new evidence in exceptional circumstances.<sup>143</sup> The Panel notes that the

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<sup>137</sup> See Appeal, para. 20.

<sup>138</sup> WPSO Assessment, pp. 2, 8, 10-11.

<sup>139</sup> See e.g. IA034/F00005/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Request for Provisional Release, 13 August 2025 (confidential version filed on 13 August 2025) ("*Veseli* Fourth Appeal Decision on Detention"), para. 50; Fifth Appeal Decision on Detention, para. 53.

<sup>140</sup> Fifth Appeal Decision on Detention, para. 51.

<sup>141</sup> See above, para. 32.

<sup>142</sup> With regard to pre-existing findings, the Panel recalls that the competent panel is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. See *Haradinaj* First Appeal Decision on Detention, para. 55; *Veseli* Second Appeal Decision on Detention, para. 14; Second Appeal Decision on Detention, paras 12-13.

<sup>143</sup> See Appeal, para. 21, referring to Impugned Decision, para. 35.

Trial Panel's observation was made in relation to Selimi's own argument that the current stage of this case means that no incentive exists for an accused to attempt to obstruct the proceedings by securing recantation.<sup>144</sup> The Panel further observes that the Trial Panel expressly stressed that the procedure foreseen under Rule 136(2) of the Rules would only apply in "exceptional circumstances" and would require "a case-specific assessment".<sup>145</sup> As a result, the Trial Panel was clearly aware of the circumstances under which further submissions may be admissible after the closure of the case. Contrary to Selimi's assertion, the limited scope of Rule 136(2) of the Rules does not imply that the risk that he will attempt to obstruct the proceedings by securing recantation is a mere theoretical eventuality.<sup>146</sup> As to Selimi's argument that the Trial Panel failed to address whether his past conduct is indicative of any desire to engage in securing recantations,<sup>147</sup> the Panel recalls that the risk assessment under Article 41(6)(b)(ii) of the Law does not require any showing of "vindictive intent" by an accused.<sup>148</sup> In the Panel's view, the same applies for any "incentive" or "desire" to secure recantations by an accused.<sup>149</sup>

61. Accordingly, the Appeals Panel dismisses Selimi's Ground of Appeal 3.

62. The Panel turns to Selimi's argument that the Trial Panel erred in relying on factors that the Court of Appeals Panel determined to be insufficient to justify detention.<sup>150</sup> In Selimi's view, the climate of witness intimidation in Kosovo and his increased knowledge of the case are the only specific factors supported by specific information or evidence upon which the Trial Panel relied in the Impugned Decision

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<sup>144</sup> See Impugned Decision, para. 35, referring to Defence Response to SPO Submissions, para. 6.

<sup>145</sup> Impugned Decision, para. 35.

<sup>146</sup> Contra Appeal, para. 21.

<sup>147</sup> See Appeal, para. 21.

<sup>148</sup> Fifth Appeal Decision on Detention, para. 52.

<sup>149</sup> Contra Appeal, para. 21.

<sup>150</sup> See Appeal, paras 23-30.

despite the fact that the Appeals Panel found them insufficient in themselves to justify continued detention.<sup>151</sup>

63. The Panel recalls that, in the context of the Fifth Appeal Decision on Detention dated 13 August 2025 to which Selimi refers,<sup>152</sup> the Court of Appeals Panel indeed found that while the climate of witness intimidation in Kosovo and an accused's increased knowledge of the case were relevant factors, each of them alone would be insufficient to justify continued detention.<sup>153</sup> The Court of Appeals Panel further found that the combination of these two factors "without more" was insufficient to support the Trial Panel's finding that there was a sufficiently real possibility that Selimi, if released, would interfere with Victims' witnesses.<sup>154</sup> However, the Panel observes that, by contrast, in the context of the Impugned Decision, the Trial Panel did not limit its assessment to these two factors *only* but also relied on other factors such as the risks associated with retaliations and securing recantations of testimonies to support its finding that a risk of obstruction still existed.<sup>155</sup> In that regard, the Appeals Panel recalls that it has upheld the Trial Panel's reliance on these factors.<sup>156</sup> Selimi's allegation of error is therefore rejected.

64. Turning to the remainder of Selimi's submissions, the Panel recalls that it dismissed above Selimi's challenges to: (i) the finding that the disclosure to the Accused of names and personal details of certain highly sensitive witnesses would not be conducive to the effective protection of witnesses who already testified in these proceedings;<sup>157</sup> and (ii) the finding that the risk of interference also includes any attempt to retaliate against or incentivise to recant witnesses who already testified in

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<sup>151</sup> See Appeal, paras 23-24, 30.

<sup>152</sup> See Appeal, paras 23-24. See also Appeal, para. 24, fn. 38.

<sup>153</sup> See Fifth Appeal Decision on Detention, paras 30-31.

<sup>154</sup> See Fifth Appeal Decision on Detention, para. 32.

<sup>155</sup> See Impugned Decision, paras 32-35, 37-41. See also above, paras 48-49. Contra Appeal, paras 23, 30.

<sup>156</sup> See also above, paras 51-54, 56-61.

<sup>157</sup> Impugned Decision, para. 34. See also above, para. 54.

these proceedings.<sup>158</sup> Accordingly, most of the arguments developed by Selimi in Ground 4 have already been considered and dismissed.<sup>159</sup>

65. Finally, the Panel will address Selimi's argument that the Trial Panel failed to explain how his alleged disclosure of privileged information to unauthorised third parties is connected to any risks of retaliation or of securing recantations.<sup>160</sup> The Panel notes that the Trial Panel did not specifically connect Selimi's alleged disclosure of privileged information to the risks of retaliation or of securing recantations and that it merely stressed that the former conduct "supports and reinforces" the finding that the release of Selimi constitutes a risk of obstruction.<sup>161</sup> Although this finding could have been further elaborated, the Panel observes that the Trial Panel referred in support to previous detention review decisions where it already addressed this specific matter.<sup>162</sup> The Panel further recalls that the Court of Appeals Panel upheld the Trial Panel's reliance on the said alleged disclosure of privileged information in the Fifth Appeal Decision on Detention, stressing that this showed, at a minimum, Selimi's possible willingness and ability to obtain access to and disseminate confidential documents in relation to a matter to which he is connected.<sup>163</sup> Therefore, the Panel considers that the connection to which Selimi refers is sufficiently established.

66. In light of the above, and recalling that Article 41(6)(b) of the Law does not require the lower panel to be satisfied that the risks specified in subparagraphs (i) to (iii) will in fact occur in the event of provisional release being granted, or to be satisfied

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<sup>158</sup> Impugned Decision, para. 35. See also above, para. 61.

<sup>159</sup> See Appeal, paras 24, 26-28.

<sup>160</sup> See Appeal, para. 29.

<sup>161</sup> Impugned Decision, para. 37.

<sup>162</sup> See Impugned Decision, para. 37 and references cited therein.

<sup>163</sup> Fifth Appeal Decision on Detention, para. 50. The Court of Appeals Panel had further stressed that it appeared that this information was received in the context of the proceedings or elicited during testimony of protected witnesses. See Fifth Appeal Decision on Detention, para. 50, referring *inter alia* to 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, paras 35-37. See also Fifth Appeal Decision on Detention, para. 53.

that they are substantially likely to occur,<sup>164</sup> the Panel finds that it was within the discretion of the Trial Panel to conclude that, if released, there is a risk that Selimi will obstruct the proceedings.

67. Accordingly, the Appeals Panel dismisses Selimi's Ground of Appeal 4.

D. WHETHER THE TRIAL PANEL ERRED IN THE ASSESSMENT OF THE MEASURES ALTERNATIVE TO DETENTION (GROUND 5)

**1. Submissions of the Parties**

68. Selimi submits that the Trial Panel erred in determining that no measures alternative to detention are capable of adequately mitigating the risks outlined in Article 41(6)(b) of the Law.<sup>165</sup>

69. Selimi avers that the Trial Panel failed to provide sufficient reasoning for this determination. He claims that considering that "the Trial Panel acknowledged that, following the conclusion of the evidentiary proceedings, the risk of obstruction materializing has decreased", it did not provide any reasoning differing from previous detention review decisions.<sup>166</sup> Selimi alleges that the Trial Panel "seemingly ignored" the existence of a reduced risk and, by "simply outlining the particularities of the surveillance regime" at the Detention Facilities, failed to adequately examine the suitability of measures alternative to detention.<sup>167</sup> In doing so, he relies on the Court of Appeals Panel's previous determination that, in his words, "it is not open to a trier of fact to simply discard all potential alternative measures without any explanation as to their unsuitability".<sup>168</sup>

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<sup>164</sup> See e.g. Fifth Appeal Decision on Detention, para. 19; First Appeal Decision on Detention, para. 44.

<sup>165</sup> Appeal, para. 31. See also Appeal, paras 2(v), 32, 34.

<sup>166</sup> Appeal, para. 33. See also Reply, para. 9.

<sup>167</sup> Appeal, para. 33. See also Reply, para. 9.

<sup>168</sup> Appeal, para. 32.

70. In Selimi's view, the Trial Panel relied on the protection provided by the Detention Facilities as the "rationale" against which the suitability of alternative measures must be weighed.<sup>169</sup> Selimi argues that the Trial Panel's reliance on this standard constitutes a miscarriage of justice, "as no individual would ever be eligible for provisional release under this test", since no measure other than detention is capable of guaranteeing "such rigorous protection".<sup>170</sup>

71. In its Response, the SPO contends that in arguing that the Trial Panel's determination is inconsistent with its conclusion of a "reduced risk", Selimi "misrepresents" the Impugned Decision.<sup>171</sup> The SPO points out that the Trial Panel held that the formal closure of the case is not "similarly capable of substantially reducing the risk of obstruction".<sup>172</sup> In the view of the SPO, the Impugned Decision clarifies that "the risk had not reduced since the preceding periodic review" and Ground 5 therefore concerns a finding from the previous review of detention decision that had not been appealed by Selimi.<sup>173</sup>

72. The SPO further submits that the Trial Panel was correct in finding that, in light of the continued risk of obstruction and the Detention Facilities' ability to limit and monitor communications, detention is the most suitable measure to ensure the protection of confidential information.<sup>174</sup>

73. Selimi replies by reiterating that the "particularities" at this stage of the proceedings, such as the decreased risk of potential interference in Case 12 and the improbability of admissibility of new evidence constitute "changed circumstances", which, contrary to the Trial Panel's determination, warrant a renewed assessment of

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<sup>169</sup> Appeal, para. 34.

<sup>170</sup> Appeal, para. 34.

<sup>171</sup> Response, para. 34.

<sup>172</sup> Response, para. 34.

<sup>173</sup> Response, para. 35 (emphasis omitted).

<sup>174</sup> Response, para. 36.

the suitability of alternative measures.<sup>175</sup> Selimi further asserts that the fact that a previous decision was not appealed is “immaterial” to the present appeal, as the factual circumstances have changed since the previous detention review.<sup>176</sup>

## 2. Assessment of the Court of Appeals Panel

74. At the outset, the Panel recalls that to fully comply with the constitutional standards, a panel must consider more lenient measures when deciding whether a person should be detained.<sup>177</sup> Similarly, and as rightly recalled by the Trial Panel, when deciding whether a person should be released or detained, panels must consider alternative measures to prevent the risks set forth in Article 41(6)(b) of the Law.<sup>178</sup> The Trial Panel also properly recalled that detention should only be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b) of the Law.<sup>179</sup> Article 41(12) of the Law sets out a number of options to be considered in order to ensure an accused’s presence at trial, to prevent reoffending or to ensure successful conduct of proceedings.<sup>180</sup> In this context, the Trial Panel also rightly emphasised that it must therefore consider all reasonable alternative measures that could be imposed and not only those raised by the Parties.<sup>181</sup> However, the Appeals Panel recalls that this obligation is not limitless;

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<sup>175</sup> Reply, para. 9.

<sup>176</sup> Reply, para. 10. See also Reply, para. 9.

<sup>177</sup> See Third Appeal Decision on Detention, para. 34. See also KSC-CC-PR-2020-09, F00006, Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 26 May 2020, para. 70 and jurisprudence cited therein; Constitutional Court Judgment of 26 April 2017 on Referral of Rules, para. 114.

<sup>178</sup> See Impugned Decision, para. 49. See also Constitutional Court Judgment of 26 April 2017 on Referral of Rules, para. 114.

<sup>179</sup> See Impugned Decision, para. 49; Constitutional Court Judgment of 26 April 2017 on Referral of Rules, para. 114; Third Appeal Decision on Detention, para. 34. See also ECtHR, *Inseher v. Germany*, nos. 10211/12 and 27505/14, Judgment, 4 December 2018, para. 137; ECtHR, *Stanev v. Bulgaria*, no. 36760/06, Judgment, 17 January 2012, para. 143.

<sup>180</sup> See Impugned Decision, para. 49; *Shala* First Appeal Decision on Detention, para. 56.

<sup>181</sup> Impugned Decision, para. 49; Constitutional Court Judgment of 26 April 2017 on Referral of Rules, para. 114; First Appeal Decision on Detention, para. 86.

rather, the Trial Panel's enquiry shall be guided by the circumstances of each case and the Parties' submissions and proposals.<sup>182</sup>

75. In the present case, the Trial Panel found that none of the previously proposed conditions nor any additional measures foreseen in Article 41(12) of the Law ordered *proprio motu* could sufficiently mitigate the existing risks of obstructing the progress of the Specialist Chambers proceedings and committing further crimes.<sup>183</sup>

76. The Panel will first address Selimi's contention that because of the change of circumstances due to the current stage of proceedings and the resulting existence of a decreased risk of obstruction, the Trial Panel should have engaged in a *de novo* assessment of the suitability of measures alternative to detention.<sup>184</sup>

77. At the outset, the Panel recalls that in the Twenty-Fourth Detention Decision dated 16 January 2026, the Trial Panel, noting that the evidentiary proceedings had now closed, found that the risk of obstruction of Case 06 proceedings was reduced.<sup>185</sup> While in the context of the Impugned Decision the Trial Panel recalled that the risk had reduced in light of the conclusion of the evidentiary proceedings, it expressly specified that this finding originated from the Twenty-Fourth Detention Decision.<sup>186</sup> Furthermore, the Panel notes that the Trial Panel made clear that the "primary change in circumstances" was the fact that the Trial Panel had heard all the evidence of the case as found in the Twenty-Fourth Detention Decision and that the closure of the case only had "a limited effect".<sup>187</sup> Notably, the Trial Panel expressly stated that it did not

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<sup>182</sup> See e.g. Third Appeal Decision on Detention, para. 50; IA016/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022 (confidential version filed on 25 March 2022), para. 42; IA014/F00008/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 31 March 2022 (confidential version filed on 31 March 2022), para. 42.

<sup>183</sup> See Impugned Decision, para. 50.

<sup>184</sup> See Appeal, paras 33-34; Reply, para. 9.

<sup>185</sup> Twenty-Fourth Detention Decision, para. 24.

<sup>186</sup> See Impugned Decision, para. 40, referring to Twenty-Fourth Detention Decision, para. 24.

<sup>187</sup> See Impugned Decision, para. 40. See also Impugned Decision, para. 30.

consider the formal closure of the case to meaningfully reduce the risk of obstruction, “unlike the conclusion of the evidentiary proceedings did at the time of the previous review of detention”.<sup>188</sup> The Panel agrees with the Trial Panel that there is still a relevant risk of obstruction at this stage which justifies the further detention.

78. The Panel therefore finds that Selimi’s reference to the fact that the risk had reduced “at this stage” misrepresents the Impugned Decision in the sense that the finding of a reduced risk is neither new nor related to the current stage of the proceedings, namely the formal closure of the case, but is rather related to the conclusion of the evidentiary proceedings, as previously found in the Twenty-Fourth Detention Decision.<sup>189</sup>

79. Since Selimi argues that the finding of a reduced risk of obstruction after the closure of the evidentiary proceedings should have entailed a new – and different – assessment, the Panel finds that he should have challenged on appeal the specific decision where the relevant finding was made, namely the previous Twenty-Fourth Detention Decision. Selimi did not do so.<sup>190</sup> Recalling that the scope of the appellate review lies strictly within the confines of the Impugned Decision,<sup>191</sup> and given that the present appeal should solely be directed against findings made in the Impugned Decision, the Appeals Panel considers that Selimi’s challenge should as such warrant summary dismissal. Nevertheless, out of fairness to the Accused and in the interests of justice, the Appeals Panel will exceptionally consider Selimi’s arguments in that respect.

80. Although the Trial Panel indeed found in the Twenty-Fourth Detention Decision that the risk of obstruction was reduced as a result of the conclusion of the

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<sup>188</sup> See Impugned Decision, para. 40. See also Impugned Decision, para. 35.

<sup>189</sup> See Appeal, paras 33-34.

<sup>190</sup> The Panel further notes that Selimi did not even make any submissions in response to the SPO’s submissions on Selimi’s continued detention in the context of the Twenty-Fourth Detention Decision. See Twenty-Fourth Detention Decision, para. 5.

<sup>191</sup> See *Haradinaj* First Appeal Decision on Detention, para. 26.

evidentiary proceedings,<sup>192</sup> the Panel does not consider that this reduction – compared to the previous review of detention, namely the Twenty-Third Detention Decision, when the Defence case was still ongoing – entailed a different assessment of measures alternative to detention.<sup>193</sup> In that regard, the Panel recalls that while the risk of obstruction may diminish with the passage of time, this is not automatic, and such risk may not always be reduced significantly, depending on the circumstances of the case.<sup>194</sup> Ultimately, what matters is whether a risk of obstruction still exists at the relevant stage of the proceedings.<sup>195</sup> The Panel also observes that Selimi did not suggest any alternative measures in the context of the Twenty-Fourth Detention Decision or make any submissions in response to the SPO's submissions on his continued detention.<sup>196</sup> In these circumstances, the Appeals Panel finds that it was reasonable for the Trial Panel to reach the conclusion that only measures in place at the Detention Facilities were suitable to address the ongoing risk of obstruction.<sup>197</sup>

81. The Panel will now address Selimi's assertion in reply that the "several particularities" identified by the Trial Panel at this stage of the proceedings, such as the fact that the potential for interference in Case 12 is now limited and that the introduction of new evidence at this stage would only be accepted in exceptional circumstances, constitute "changed circumstances" and "necessarily diminish the

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<sup>192</sup> See Twenty-Fourth Detention Decision, para. 24.

<sup>193</sup> Compare Twenty-Third Detention Decision, para. 23 (where the presentation of the evidentiary proceedings – namely the Defence case – was still ongoing) with Twenty-Fourth Detention Decision, para. 24 (where the Trial Panel had already closed the evidentiary proceedings). The Panel further notes that in the Fifth Appeal Decision on Detention, which was issued when the SPO case was closed but the Defence case had not yet started, the Court of Appeals Panel upheld the continued existence of a risk of obstruction – notably against SPO witnesses who already testified, but dismissed the Trial Panel's findings as to a risk of interference with respect to Defence witnesses. See Fifth Appeal Decision on Detention, paras 33, 49, 51, 54-55.

<sup>194</sup> See e.g. Fifth Appeal Decision on Detention, para. 45; *Veseli* Fourth Appeal Decision on Detention, para. 35; *Veseli* Supreme Court Second Decision on Protection of Legality, para. 61.

<sup>195</sup> See Fifth Appeal Decision on Detention, para. 44; *Veseli* Fourth Appeal Decision on Detention, para. 35.

<sup>196</sup> See Twenty-Fourth Detention Decision, para. 5.

<sup>197</sup> See Twenty-Fourth Detention Decision, paras 32-33.

resulting risks”.<sup>198</sup> The Panel considers that admission of new evidence under the procedure foreseen by Rule 136(2) of the Rules would have already been exceptional at the time of the Twenty-Fourth Detention Decision, namely after the conclusion of the evidentiary proceedings in the case, and is therefore not a “new” particularity. As to the finding that the potential for interference in Case 12 was limited,<sup>199</sup> in the Appeals Panel’s view, it is likewise incapable of affecting the Trial Panel’s conclusion on the risk of obstruction in light of its reliance on several other factors.<sup>200</sup> The Panel further recalls that there is no requirement for a panel conducting a review of detention to “quantify” the risk of obstruction it identifies; rather, it must satisfy itself that “there are articulable grounds to believe” that at least one of the enumerated risks under Article 41(6)(b) of the Law will materialise.<sup>201</sup>

82. Consequently, the Panel does not consider that these “particularities” amount to a change of circumstances that would be able to affect the Trial Panel’s conclusion as to the continued existence of the identified risks under Article 41(6)(b)(ii) and (iii) of the Law. In the Appeals Panel’s view, nothing has occurred since the previous assessment warranting a different or *de novo* assessment of conditions alternative to detention.<sup>202</sup>

83. With respect to Selimi’s argument that the Trial Panel erred in providing “virtually the same reasoning” as in previous detention review decisions,<sup>203</sup> the Panel recalls that it is reasonable for a lower panel to recall previous findings regarding the assessment of measures alternative to detention as long as no relevant developments have occurred since the previous review and as long as the lower panel, after

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<sup>198</sup> See Reply, para. 9.

<sup>199</sup> See Impugned Decision, para. 36. The Trial Panel referred specifically to the SPO’s notice of the closure of its case and the Single Trial Judge’s finding that none of the SPO witnesses are likely to be subject to the influence of the accused.

<sup>200</sup> See above, paras 48-49.

<sup>201</sup> See e.g. Fifth Appeal Decision on Detention, para. 48.

<sup>202</sup> Contra Appeal, paras 33-34; Reply, para. 9.

<sup>203</sup> See Appeal, para. 33.

reviewing these findings, remains persuaded, at the time of the review decision, that the same risks continue to exist.<sup>204</sup> Accordingly, in light of Selimi's failure to demonstrate any change of circumstances at the current stage of the proceedings, the Appeals Panel sees no error in the Trial Panel's decision to provide the same reasoning as in the previous detention decision.<sup>205</sup>

84. Turning to Selimi's claim that the Trial Panel discarded all potential alternative measures without any explanation as to their unsuitability,<sup>206</sup> the Appeals Panel indeed observes that the Trial Panel, when reaching its conclusion that no measures alternative to detention were capable of adequately mitigating the identified risks, neither elaborated on nor specifically addressed why no alternative measures would be able to do so.<sup>207</sup> That being said, the Panel also observes that Selimi did not make any submissions regarding measures alternative to detention in his Defence Response to SPO Submissions.<sup>208</sup>

85. Against this backdrop, the Panel finds that the Trial Panel ought to have been more explicit and provide more reasoning when it reached its conclusion in the established absence of any change of circumstances and in the absence of any submissions pointing to further or new measures alternative to detention.<sup>209</sup> However, the Panel finds that this does not amount to a failure to provide adequate reasoning. The Appeals Panel therefore finds that Selimi fails to demonstrate that the Trial Panel erred in concluding that neither any of the previously proposed measures nor any

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<sup>204</sup> See IA022/F00005/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention, 22 August 2022 (confidential version filed on 22 August 2022), para. 38. See also *Veseli* Supreme Court Second Decision on Protection of Legality, para. 61; *Haradinaj* First Appeal Decision on Detention, para. 55.

<sup>205</sup> See Impugned Decision, paras 50-51. Contra Appeal, para. 33.

<sup>206</sup> See Appeal, paras 32-33.

<sup>207</sup> See Impugned Decision, paras 50-51.

<sup>208</sup> See Defence Response to SPO Submissions. See also below, para. 87, fn. 215.

<sup>209</sup> See above, para. 83.

additional measures could sufficiently mitigate the identified risks of obstruction or commission of further crimes.<sup>210</sup>

86. The Panel will now turn to Selimi's argument that the Trial Panel relied on the protection provided by the Detention Facilities as the applicable "rationale" against which the suitability of alternative measures must be weighed.<sup>211</sup> The Panel notes that the Trial Panel found that the specific safeguards in place at the Detention Facilities, such as the recording mechanisms, provide robust assurances against the risks linked to unmonitored forms of communications, and that the Detention Facilities offer a controlled environment where a potential breach would be more easily identified.<sup>212</sup>

87. It is true that the Trial Panel did not specifically examine the protection that would be offered by alternative measures in the Impugned Decision.<sup>213</sup> The Appeals Panel notes however that the Trial Panel relied on previous detention decisions where the Pre-Trial Judge and the Trial Panel already considered the suitability of a large number of alternative measures either proposed by the Accused or *proprio motu*, and verified their enforceability – the assessment of which was upheld on appeal.<sup>214</sup> Furthermore, Selimi has not suggested any new alternatives to detention.<sup>215</sup> In light of

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<sup>210</sup> See Impugned Decision, paras 50-51.

<sup>211</sup> See Appeal, para. 34.

<sup>212</sup> See Impugned Decision, para. 50.

<sup>213</sup> See Impugned Decision, paras 50-51.

<sup>214</sup> See Impugned Decision, para. 50, fn. 96. See also Third Detention Decision, paras 55-64, 69-72; Third Appeal Decision on Detention, paras 35-44, 49, 51; Fourth Detention Decision, paras 54-59; Fourth Appeal Decision on Detention, paras 14-17, 21-23; Twenty-First Detention Decision, paras 56-60. Although Selimi did not appeal the Trial Panel's assessment in the Twenty-First Detention Decision of his proposed measures and of the assurances provided by the Kosovo Police, his co-Accused Veseli and Krasniqi did and the Court of Appeals Panel upheld the Trial Panel's assessment of the conditions of release. See *Veseli* Fourth Appeal Decision on Detention, paras 63-70, 77-82, 87-93; IA035/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention, 14 August 2025 (confidential version filed on 13 August 2025), paras 57-67.

<sup>215</sup> In fact, the Panel observes that Selimi did not file any submissions with respect to the last three previous decisions reviewing his detention. See Twenty-Second Detention Decision, para. 10; Twenty-Third Detention Decision, para. 3; Twenty-Fourth Detention Decision, para. 5. The last submissions he filed addressing his conditional release and proposing measures alternative to detention were made in the context of the Twenty-First Detention Decision. See Twenty-First Detention Decision, paras 9, 48-

these specific circumstances, the Appeals Panel considers that it was not required for the Trial Panel to elaborate further on this issue. In any event, the Panel considers that the Trial Panel, in its assessment, did not set a standard that would be satisfied only when the protection offered would be equivalent to that of the Detention Facilities. In the Panel's view, nothing in the Impugned Decision indicates that the Trial Panel would systematically discard alternative measures from the moment they would not be as equally effective as those imposed in detention. Therefore, contrary to Selimi's assertion, the Panel finds that the Trial Panel did not rely on the Detention Facilities regime as the standard for finding that no other measures could effectively mitigate the risks.<sup>216</sup>

88. In light of the above, the Panel finds that Selimi has failed to demonstrate any error by the Trial Panel in its assessment of measures alternative to detention. Accordingly, the Appeals Panel dismisses Selimi's Ground of Appeal 5.

## V. DISPOSITION

89. For these reasons, the Court of Appeals Panel:

**DISMISSES** the Appeal in its entirety;

**ORDERS** the Defence and the SPO to submit public redacted versions of the Appeal (IA042/F00001), the Response (IA042/F00003) and the Reply

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51; F03078/RED, Public Redacted Version of Selimi Defence Request for Provisional Release with Confidential Annexes 1-2, 22 April 2025 (confidential version filed on 3 April 2025). However, Selimi did not appeal this aspect – on measures alternative to detention – of the Twenty-First Detention Decision. See Fifth Appeal Decision on Detention; IA033/F00001, Selimi Defence Appeal against Consolidated Decision on Selimi Defence Request for Provisional Release and on Periodic Review of Detention, 23 May 2025 (confidential, reclassified as public on 13 August 2025).

<sup>216</sup> Contra Appeal, para. 34.

(IA042/F00004), or indicate, through a filing, whether they can be reclassified as public, within ten days of receiving notification of the present Decision; and

**INSTRUCTS** the Registry to execute the reclassification as public of the Appeal, Response and Reply upon indication by the Defence and SPO, if any, that they can be reclassified.



**Judge Michèle Picard,  
Presiding Judge**

Dated this Thursday, 28 May 2026

At The Hague, the Netherlands